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नई दिल्ली, शनिवार, सितम्बर 26, 1981/आश्विन 4, 1903

No. 39]

NEW DELHI, SATURDAY, SEPTEMBER 26, 1981/ASVINA 4, 1903

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह भाग संकलन के रूप में रखा जा सके
Separate paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii) PART II—Section 3—Sub-section (ii)

(रक्षा मंत्रालय को छोड़कर) भारत सरकार के मंत्रालयों द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएँ
Statutory Orders and Notifications issued by the Ministries of the Government of India
(other than the Ministry of Defence)

वाणिज्य मंत्रालय

नई दिल्ली, 26 सितम्बर, 1981

का० आ० 2496—केन्द्रीय सरकार, निर्यात (क्वालिटी नियंत्रण और निरीक्षण) अधिनियम 1963 (1963 का 22) की धारा 17 द्वारा प्रवृत्त शक्तियों का प्रयोग करते हुए, निर्यात (क्वालिटी नियंत्रण और निरीक्षण) नियम, 1964 का और संशोधन करने के लिए निम्नलिखित नियम बनाती है, अर्थात्:—

1. (1) इन नियमों का संक्षिप्त नाम निर्यात (क्वालिटी नियंत्रण और निरीक्षण) संशोधन नियम, 1981 है।

(2) ये राजपत्र में प्रकाशन की तारीख को प्रवृत्त होंगे।

2. निर्यात (क्वालिटी नियंत्रण और निरीक्षण) नियम, 1964 के नियम, 16 में,—

(1) उप-नियम (1) के अंत में परिषद् की ओर से सचिव तथा परिषद् के अपर निदेशक “शब्दों के रचना पर” परिषद् की ओर से सदस्य सचिव तथा परिषद् के निदेशक शब्द रखे जाएंगे:

(2) उप-नियम (2) के स्थान पर निम्नलिखित रखा जाएगा, अर्थात्:—

“(2) परिषद् के लेखों की भारत के नियंत्रक महा-लेखापरीक्षक या उसके द्वारा इस निमित्त नियुक्त किसी अन्य व्यक्ति द्वारा जांच

लेखा-परीक्षा की जाएगी और ऐसी लेखा-परीक्षा के संबंध में उसके द्वारा उपगत व्यय परिषद् द्वारा देय होगा”;

(3) उप-नियम (3) के स्थान पर निम्नलिखित रखा जाएगा, अर्थात्:—

“(3) परिषद् के लेखों की लेखा-परीक्षा के संबंध में भारत के नियंत्रक महा-लेखापरीक्षक या उसके द्वारा नियुक्त किसी अन्य व्यक्ति को ऐसी लेखा-परीक्षा के संबंध में ये सभी अधिकारी तथा सुविधाएँ और प्राधिकार होंगे जो सरकारी लेखों की लेखा-परीक्षा के संबंध में भारत के नियंत्रक महा-लेखापरीक्षक को होते हैं और विशेषतया बहियों, लेखापत्रों, संबंधित बाउचरों और अन्य दस्तावेजों और कागज-पत्रों को पेश करने की मांग करने का तथा परिषद् के कार्यालय का निरीक्षण करने का अधिकार होगा।”

(4) उप-नियम (4) में “इस निमित्त चादीरित लेखावालों द्वारा” शब्दों के स्थान पर “भारत के नियंत्रक महा-लेखापरीक्षक द्वारा या उसके द्वारा इस निमित्त नियुक्त किसी अन्य व्यक्ति द्वारा” शब्द रखे जाएंगे।

[मि० सं० 3 (56)/76-नि० तथा नि० ड०]

सी० बी० कुकरेती, संयुक्त निदेशक

पाठ टिप्पणी:—का० आ० 2865, तारीख 30-9-1978

MINISTRY OF COMMERCE

New Delhi, the 26th September, 1981

S.O. 2496.—In exercise of the powers conferred by Section 17 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), the Central Government hereby makes the following rules further to amend the Export (Quality Control and Inspection) Rules, 1964, namely:—

1. (1) These rules may be called the Export (Quality Control and Inspection) Amendment Rules, 1981.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Export (Quality Control and Inspection) Rules, 1964 in rule 16,—

(1) In sub-rule (1) for the words at the end "the Secretary and the Additional Director of the Council", the words "Member-Secretary and Director of the Council" shall be substituted;

(2) for sub-rule (2) the following shall be substituted, namely :—

"2' The accounts of the Council shall be subject to audit annually by the Comptroller and Auditor General of India or by any person appointed by him in this behalf and any expenditure incurred by him in connection with such audit shall be payable by the Council.";

(3) for sub-rule (3) the following shall be substituted, namely :—

"3 The Comptroller and Auditor General of India and any person appointed by him in connection with the audit of the accounts of the Councils shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor General of India has in connection with the audit of Government accounts and, in particular, shall have right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect the office of the Council.";

(4) In sub-rule (4) for the words "Chartered Accountant in the behalf", the words "Comptroller and Auditor General of India or any person appointed by him in this behalf" shall be substituted.

[F. No. 3(56)/76-EI&EP]

C. B. KUKRETI, Joint Director

Foot note.—S.O. 2865 of 30-9-1978.

अम संज्ञालय

मावेन

नई दिल्ली, 8 सितम्बर, 1981

का०मा० 2497.—भारत सरकार के मूलपूर्व अम और पुनर्वासि मंत्रालय की अधिसूचना संख्या का०मा० 461 दिनांक 5 फरवरी, 1983 द्वारा गठित अम न्यायालय, जिसका मुख्यालय मद्रास में स्थित है, के पीठासीन अधिकारी का पद रिक्त हो गया है,

अतः अब औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 8 के उपबंधों के अनुसरण में केन्द्रीय सरकार तिरु कैजी महमूद को पूर्वोक्त गठित अम न्यायालय का पीठासीन अधिकारी नियुक्त करती है।

[संख्या एस-11020/7/81-डी 1 (ए०)]

एस० के० नारायणन, प्रवर सचिव

MINISTRY OF LABOUR

ORDER

New Delhi, the 8th September, 1981

S.O. 2497.—Whereas a vacancy has occurred in the Office of the Presiding Officer of the Labour Court with head quarters at Madras constituted by the notification of the Government of India in the late Ministry of Labour and Rehabilitation No. S. O. 461 dated the 5th February, 1963;

Now, therefore, in pursuance of the provisions of section 8 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby appoints Thiru Fysee Mahmood as the Presiding Officer of the Labour Court constituted as aforesaid.

[No. S-11020(7)/81-D.I(A)]

L. K. NARAYANAN, Under Secy.

S.O. 2498.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Hyderabad, in the industrial dispute between the employers in relation to the management of Singareni Collieries Company Limited, Bellampalli, Adilabad Dist. (A.P.) and their workmen, which was received by the Central Government on 3-9-1981.

BEFORE THE INDUSTRIAL TRIBUNAL (CENTRAL)
AT HYDERABAD

PRESENT :

Sri B. Prasada Rao, B.A., B.L.,

Industrial Tribunal (Central).

Industrial Dispute No. 9 of 1981

BETWEEN

Workmen of Singareni Collieries Company Limited,
Bellampalli, Adilabad District (A.P.)

AND

The Management of Singareni Collieries Company Limited,
Bellampalli, Adilabad District (A.P.)

APPEARANCES :

None Present on behalf of workmen as well as Management.

AWARD

This arises out of a reference made by the Government of India under Section 10(1)(d) of the Industrial Disputes Act, 1947 through notification date 30-5-1981 in respect of an industrial dispute that arose between the Management of Singareni Collieries Company Limited, Bellampalli, Adilabad District in the State of Andhra Pradesh and their Workmen and the issues that are referred for adjudication are the following —

SCHEDULE

"Whether the demand of the Singareni Collieries Workers Union, Bellampalli for regularisation of Shri Vingari China Mallaiah and 18 others (as per annexure) is justified? If so, to what relief are the workmen entitled?"

ANNEXURE

1. S/Shri Vingari China Mallaiah
2. Chilka Lingaiah
3. Sonigalal Rajam
4. Akula Ramaswamy
5. Thatikonda Rajam
6. Thandra Bhoomaiah
7. Kanakam Swamy
8. Manepalli Phshalah
9. Theta Ballaiah
10. Kukkala Pullaiah
11. K. Gopal Rao
12. Burra Lingalah
13. Chedipalli Laxmalah

14. S/Shri E. Veerabhadraiah
15. Repalli Haguloo
16. Samala Thirupathi
17. Emirla Bhbomaiah
18. S. Mallesh and
19. Jakkula Rayamaloo.

2. After the receipt of the reference which was registered as Industrial Dispute No. 9 of 1981, notices were issued to both the parties on 10-6-1981 which were served but neither of the parties appeared on 2-7-1981 to which date the matter stood posted for claims statement of the Workmen. The notice dated 2-7-1981 was again issued to the Workers' Union and it was also served and the I.D. was posted for claims statement of the workmen on 27-7-1981 on which date neither of the parties appeared before the Tribunal either in person or through their representatives nor filed their statements. A final notice dated 27-7-1981 was ordered to be issued to the Workmen which was also served, but again neither of the parties appeared on that date to which the matter stood posted for claims statement of the workmen.

3. This attitude on the part of the parties clearly exhibits their indifference or at any rate that they are not interested in the matter. When the parties themselves are so indifferent and dis-interested in the matter there is no point in keeping the matter pending any longer. Since no Award on merits can be passed in the absence of any evidence placed before the Tribunal by the parties and as I am satisfied that the parties are not at all interested in the matter, I am constrained to hold that there is absolutely no justification for keeping the matter pending any longer.

4. For the above reasons, the reference is terminated.

Dictated to the Stenographer, transcribed by him and corrected by me and given under my hand and the seal of this Tribunal, this the 17th day of August, 1981.

Sd/-

B. PRASADA RAO,
Presiding Officer
Industrial Tribunal

[No. L-2011/19/80-D.IV(B)]

New Delhi, the 9th September, 1981

S.O. 2499.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Hyderabad, in the industrial dispute between the employers in relation to the management of Singareni Collieries Company Ltd., Bellampalli, Adilabad Distt (A.P.) and their workmen, which received by the Central Government on 3-9-1981.

BEFORE SHRI B. PRASADA RAO, B.A., B.L., PRESIDING OFFICER, INDUSTRIAL TRIBUNAL (CENTRAL) AT HYDERABAD

Industrial Dispute No. 11 of 1981

BETWEEN

Workmen of Singareni Collieries Company Limited, Bellampalli, Adilabad District. A.P.

AND

The Management of Singareni Collieries Company Limited, Bellampalli, Adilabad District. A.P.

APPEARANCES :

None appeared on behalf of both the parties.

AWARD

This arises out of a reference made by the Government of India under Section 10(1)(d) of the Industrial Disputes Act, 1947 through Notification No. L-21011.6 81-D.IV.B dated 10-6-1981 in respect of an industrial dispute that arose between the Management of Singareni Collieries Company

Limited, Bellampalli Adilabad District, A.P. and their Workmen and the issue that are referred for adjudication are the following :—

SCHEDULE

"Whether the decision of the management of M/s. Singareni Collieries Co., Ltd., to deduct the wages of coal fillers of Somagundem-I, Kalyan Khani-I, and Kalyan Khani II Inclines for going on strike in the month of April, 1981 is legal and justified ?

If not, to what relief are the workmen concerned entitled ?"

2. After the receipt of the reference which was registered as Industrial Dispute No. 11 of 1981, notices were issued to both the parties on 16-6-1981 which were served but neither of the parties appeared on 8-7-1981 to which date the matter stood posted for appearance of parties and for filing their statements. The matter was therefore, adjourned to 4-8-1981 on which date also neither of the parties appeared before the Tribunal either in person or through their representatives nor filed their statements. A final notice was sent on 4-8-1981 and the parties did not however turn up nor sent their statements on 26-8-1981.

3. Notices were served on both parties previously. The Management was served on 20-6-1981, 15-7-1981 and 8-8-1981. The workers were served on 19-6-1981, 15-7-1981 and 10-8-1981. In spite of service of notice none of the parties turned up on the last two prior occasions i.e. on 8-7-1981, 4-8-1981 and also this day. So, evidently the parties have no interest in the matter, the Tribunal is left with no alternative but to terminate the reference.

4. Hence the reference is terminated.

Dicted to the Stenographer, transcribed by him and corrected by me and given under my hand and the seal of this Tribunal, this the 26th day of August, 1981.

Sd./-

B. PRASADA RAO,
Presiding Officer

[No. L-21011/6/81-D.IV(B)]

New Delhi, the 11th September, 1981

S.O. 2500.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Jabalpur, in respect of a complaint under Section 33A of the said Act filed by Shri Uma Singh against the management of Burhar Sub-Area of Western Coalfields Limited, Post Amlai, Dist. Shahdol (M.P.) and their workmen, which was received by the Central Government on the 9-9-1981.

BEFORE JUSTICE SHRI S.R. VYAS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR (M.P.)

CASE NO. CGIT/LC(A) (4)-1980

PARTIES :

Shri Uma Singh,
P.O. Amlai Colliery,
District Shahdol (M.P.)

...Applicant.
(Complainant)

VERSUS

The Sub-Area Manager,
Burhar Sub-Area, of Western
Coalfields Limited, Post Amlai,
District Shahdol (M.P.) Non-applicant. (Management).

APPEARANCES:

For Applicant.....Shri Jagdish Singh

For Non-applicant.....Shri P. S. Nair, Advocate.

INDUSTRY : Coal

DISTRICT : Shahdol (M.P.)

AWARD

This is an application under Sec. 33-A of the Industrial Disputes Act 1947, hereinafter referred to as the Act, and was made in reference case No. CGIT/LC(R) (5)/1980 in which a dispute with regard to the applicant was referred to this Tribunal for adjudication vide Notification No. L-22011(8)/79-D. IV(B) Dated 7th February, 1980. The dispute was as follows :—

“Whether the action of the management of Burhar Sub-Area of Western Coalfields Limited in not regularising Shri Uma Singh as Clerk for working as Store Keeper at Amlai Colliery Hospital since 1974 is justified. If not, to what relief is the concerned workman entitled?”

While the aforesaid reference was pending (since decided on 14-12-1980) the applicant made the present application on 17-6-1981 and alleged as under :—

That while an industrial dispute was pending adjudication before this Tribunal the Non-applicant, Sub-Area Manager of the Burhar Sub-Area of the Amlai Colliery transferred him from the Amlai Colliery Dispensary to the Central Hospital at Burhar. The applicant prayed for suitable action being taken and necessary order being passed with regard to his transfer. The applicant annexed to his petition an order dated 25/30-5-1980 passed by the Senior Personnel Officer transferring him in the same capacity (Ward Boy) from the Amlai Colliery Dispensary to the Burhar Central Hospital, Burhar. This order was received by him on 11-6-1980.

2. In reply to his application the Non-applicant contended that there was no contravention of the provisions of Sec. 33 of the Act, that the provisions of Sec. 33 or 33-A were not attracted in this case; that transfer of a workman from one dispensary to another hospital is a normal incidence and condition of service and that there was no occasion for an application being made as contemplated by Sec. 33 of the Act.

3. Though, in the application as made to this Tribunal, the only prayer was for stying the operation of the transfer order, but it is evident that the order was received by the workman on 11-6-1980 and this application was made on 17-6-1980 by which time the transfer order seems to have been complied with.

4. The applicant examined himself and the Non-applicant examined Dr. B. K. Tiwari the Medical Officer of the Burhar Central Hospital.

5. In view of the allegations made in the applicant's application the reply by the Non-applicant and the oral evidence given by both the parties the only question that arises for consideration is as to whether the management has viz. the Non-applicant, has contravened the provisions of Sec. 33(1)(a) of the Act by affecting the transfer of the applicant from one dispensary at Amlai Colliery to the Central Hospital at Burhar. These provisions are as under:—

“33. Conditions, etc of service to remain unchanged under certain circumstances during pendency of proceedings :—

(1) During the pendency of any conciliation proceeding before (an arbitrator) a Conciliation Officer or a Board or of any proceeding before Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall—

(a) in regard to any matter connected with the dispute, alter to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding.”

(b)

(2)

(3)

(4)

(5)

6. It was contended on behalf of the applicant that since an industrial dispute raised by the applicant was pending adjudication before this Tribunal the management was not competent to alter to this prejudice the conditions of service applicable to him immediately before the commencement of such proceedings. This question, in my opinion, must be answered against the applicant.

7. According to the applicant, he was working in the Amlai Dispensary and was allotted residential quarter near that dispensary for his residence. Though he disputes his status of a Ward Boy and claimed that he was working as a clerk but this matter has already been adjudicated upon in the reference quoted above. He has further stated that he Burhar Central Hospital is about 5 Kms. away from his residence and because of this distance he has to travel about 10 Kms. every day. In his cross-examination he has, however, admitted that so far as other conditions of service are concerned, they have remained unchanged. The management's witness Dr. B. K. Tiwari, the Senior Medical Officer, at the Burhar Central Hospital has stated that the Central Hospital as well as the Dispensary at Amlai are controlled by the management and the Amlai Dispensary is controlled by the Central Hospital. While referring to the transfer of the applicant from Amlai to Burhar as a Ward Boy he stated that all the terms and conditions of his services at the Amlai Dispensary remained the same even on his transfer to Burhar. According to him, the distance between Amlai and Burhar is about 2 Kms.

8. In his cross-examination, he was asked as to what are the working hours, he replied that the normal duty hours of a Ward are 8 hours per day and only in case of emergency when a call is sent, the Ward Boy is called and for the overtime duty discharged by the Ward Boy he is paid overtime allowance.

9. From the aforesaid statements made by the applicant and the management's witness, it is clear that it is an admitted fact that the applicant was transferred from Amlai Colliery to Burhar during the pendency of a reference regarding a dispute raised by the applicant with regard to his status as a clerk. The question is whether by affecting the aforesaid transfer from Amlai to Burhar the employer i.e. the Non-applicant in this case, has effected any change in the conditions of service to his prejudice (emphasis applied). What Sec. 33(1)(a) prohibits is alteration of any condition of service to the prejudice of the workman during the pendency of a dispute between the workman and the management. Any alternation in the conditions of service which does not prejudicially effect the workman would thus be deemed to have not been prohibited by the Act. It is admitted by the applicant that he still occupies the residential quarter allotted to him for his residence at Amlai.

10. According to Dr. B. K. Tiwari the distance between the Amlai Dispensary, adjacent to which the applicant has his residential quarter, and the Burhar Central Hospital is about 2 Kms. only. The applicant no doubt says that the distance between Amlai and Burhar is 5 Kms. and he has to cover 4 or 5 Kms. daily but I find no reason to disbelieve a Senior Officer like Dr. B. K. Tiwari who has no particular reason to give false evidence on such a petty matter. According to Dr. Tiwari the applicant was a Ward Boy at the Amlai Dispensary and continues to work as a Ward Boy at the Burhar Central Hospital also. The only difference is that while at Amlai he was not required to cover any way distance for attending to his duties but for attending to his duties at Burhar he has to cover a distance of 2 Kms. every day and on such dates also when he receives a call for all emergency case.

11. The applicant does not say that by the order by which he was appointed there was a condition that he shall get a residential quarter adjacent to the dispensary where he is to be appointed as a Ward Boy. The appointment order has also not been filed. Therefore it cannot be said that provision for a residential quarter near or quite adjacent to the dispensary was one of the conditions of service of the applicant. Workman employed in any industry may either as a matter of concession on the part of the management or as a matter of rule be provided residential quarter. But in the instant case, there is no allegation that there was a condition in his appointment for the management to provide a residential quarter for him so near to his place of residence that in case

he is required to travel about 2 Kms. to attend to his duties then such travelling would amount to a change of condition of service. The workmen in the ordinary course are required to cover the distance between the place of their residence and the place where they are employed for work. Such matters are incidence of service and cannot be categorised as conditions of service. The applicant still occupies the residential quarter at Amlai and he has not been asked to vacate it. The only extra burden resulting from his transfer from Amlai to Burhar is that he is to cover a small distance of 2 Kms. for going to and 2 Kms while returning from the place of his employment. Had the applicant alleged and proved also that provision for residence at a small distance from the place of work was a condition of his service then only it could be said that the aforesaid extra burden which has resulted from his transfer is an alteration in the conditions of service to his prejudice. Unless the applicant establishes that such a minor change has been to his prejudice in the conditions of his service till then his complaint under Sec. 33-A would not be entertainable.

12. Having thus considered the oral and documentary evidence given by both the parties I have come to the conclusion that in this case the management has not made any alteration in the conditions of service of the applicant to his prejudice. Consequently, the applicant has no ground to make a complaint which he has made in this case.

13. In the result, the application is liable to be and is hereby dismissed. In the circumstances of the case, both the parties shall bear their own costs as incurred.

Dated: 29th August, 1981

S. R. VYAS, Presiding Officer
No. L-22011(8)-79.D IV(B)]

S.O. 2501.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Jabalpur, in the industrial dispute between the employers in relation to the management of Western Coalfields Limited, Pench Area, Parasia and their workmen, which was received by the Central Government on the 9-9-81.

BEFORE JUSTICE SHRI S. R. VYAS, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR (MP).

(CAMP AT INDORE)

Case No. CGIT/LC(R) (80)/1980

PARTIES :

Employers in relation to the management of Western Coalfields Limited, Pench Area, Parasia in relation to their Chandametta Colliery and their workman, Shri Rampiare, represented through the M. P. Rashtriya Koyla Khadan Mazdoor Sangh (INTUC), Chandametta, P. O. Parasia, District Chhindwara (M. P.)

APPEARANCES :

For Union.—Shri S. K. Rao, Advocate.

For Management.—Shri P. S. Nair, Advocate.

INDUSTRY : Coal

District : Chhindwara (MP).

AWARD

Vide Notification No. L-22012(3)/80-D. IV(B) Dated 19th December, 1980, Government of India in the Ministry of Labour, in exercise of the powers conferred on it by Clause 10(1)(d) of the Industrial Disputes Act 1947, has referred the following dispute to this Tribunal, for adjudication :—

"Whether the action of the management of Western Coalfields Limited, Pench Area, Parasia, in relation to their Chandametta Colliery in terminating the services of Shri Rampiare S/o Banki, a permanent tub-loader of the said Colliery, with effect from 10-4-78 is justified. If not, to what relief the said workman is entitled?"

2. During the pendency of the adjudication proceedings of this dispute before this Tribunal both parties expressed that efforts are being made for a mutual settlement of the dispute and that time may be granted. After a couple of adjournments were granted, the parties filed a written settlement which was admitted by both the parties' representatives.

3. The dispute in this case was regarding the termination of the services of Shri Rampiare S/o Sri Banki, a permanent Tub-loader of the Western Coalfields Limited in their Chandametta Colliery, Pench Area, Parasia. The workers union was demanding reinstatement of the workman Shri Rampiare and the management offered some other job at the Bhamori Colliery. Finally both the parties agreed and came to terms which are incorporated in the written settlement filed before this Tribunal. In accordance with the terms of the settlement, the workman Shri Rampiare, has been given employment as a Tub-loader in the Bhamori Colliery in the pench Area on 15-7-1980. Thus, it is evident that for the last 12 months the parties have been acting in accordance with the terms of the settlement. The settlement appears to be just and fair and deserves to be accepted.

4. Accordingly as prayed for by both the parties an award is given in the following terms of settlement arrived at between the parties —

1. It is agreed by the management to offer the job of Tub-loader to Shri Rampiare S/o Banki Ex-Tub-loader of Chandametta Colliery on the condition that the union will withdraw the dispute in question.
2. As per understandings reached between the parties Shri Rampiare S/o Banki was offered employment as Tub-loader at our Bhamori Colliery in Pench Area on 15-7-1980.
3. This is in full and final settlement of the dispute and the union shall not raise any further dispute on behalf of him in this respect.
4. This settlement shall not be treated as a precedent on any other subject.

The settlement filed by the parties shall be a part of the award as Annexure A. In view of the fact that both the parties have settled the dispute there is no order as to costs.

Dated 29-8-81

S. R. VYAS, Presiding Officer

[No. L-22012(3)/80-D.IV(B)]

ANNEXURE 'A'

MEMORANDUM OF SETTLEMENT

FORM 'H'

(See Rule 58)

Representing Management.—Sri C. L. Jaiswal Sr. Personnel Officer, Western Coalfields Ltd., Pench Area, P. O. Parasia Dist. Chhindwara M. P.

Representing Union.—Sri S. S. Bhardwaj, Secretary MPRKKM Sangh (INTUC) Chandametta.

Short Recital of the case

The MPRKKM Sangh (INTUC) raised Industrial dispute before the Asstt. Labour Commissioner, (C) Chhindwara vide their L. No. INTUC/22/79/726 dt. 24-12-79 demanding reinstatement of Sri Rampiare s/o Banki Ex-Tub loader of Chandametta colliery. The dispute was seized in Conciliation vide File No. CHA-1(1)80 of Asstt. Labour Commissioner (C) Chhindwara and the dispute ended in failure.

The parties after detailed discussions on the dispute have settled the dispute on the following terms.

Terms of Settlement

1. It is agreed by the management to offer the job of Tub loader to Sri Rampiare S/o Banki ex-Tub loader of Chandametta colliery on the condition that the union will withdraw the dispute in question.

2. As per the understandings reached between the parties Sri Rampyare s/o Banki was offered employment as Tub Loader at our Bhamori colliery in Pench Area on 15-7-80.

3. This is in full and final settlement of the dispute and the union shall not raise any further dispute on behalf of him in this respect.

4. This settlement shall not be treated as a precedent on any other subject.

Representing management
(C. L. Jaiswal)

Representing Union
(S. S. Bharadwaj)

Witnesses

1. Sd/- Illegible

2. Sd/- Illegible

Parasia, dated 6-7-71.

S. R. VYAS, Presiding Officer

Annexure to the award in case No. CGIT/LC(R)(80)/1980

New Delhi, the 17th September, 1981

S.O. 2502—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Jabalpur, in the industrial dispute between the employers in relation to the management of Rungta Colliery of Western Coalfields Limited, P. O. Rungta Colliery Distt. Shahdol (M. P.) and their workmen, which was received by the Central Government on 9-9-1981.

BEFORE JUSTICE SHRI S. R. VYAS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL, TRIBUNAL-CUM-LABOUR COURT, JABALPUR (M.P.)

Case No. CGIT/LC(R)(46)/1980

PARTIES :

Employers in relation to the management of Rungta Colliery of Western Coalfields Limited, P. O. Rungta Colliery, District Shahdol (M. P.) and their workman, Dr. A. D. Bhatnagar, represented through the General Secretary, Shahdol Jilia Janta Koyla Khan Mazdoor Sangh (Branch Rungta), P. O. Dhanpuri, District Shahdol (M. P.).

APPEARANCES :

For workman.—Shri Om Prakash Pandey, President of the Union.

For Management.—Shri P. S. Nair, Advocate.

INDUSTRY : Coal DISTRICT : Shahdol (M.P.)

AWARD

This is a reference made by the Government of India in the Ministry of Labour vide Notification No. L-22012(25)/79-D.IV(B) dated 30th July, 1980 to this Tribunal for the adjudication of the following dispute —

“Whether the action of the management of Sohagpur Area of Western Coalfields Limited in terminating the services of Shri A. D. Bhatnagar, Junior Medical Officer after having rendered continuous service of three years, is justified. If not, to what relief is the concerned workman entitled?”

2. Briefly stated, the facts giving rise to the aforesaid dispute referred to this Tribunal for adjudication are as under :

On 19-7-1973 Dr. A. D. Bhatnagar was appointed as a Junior Medical Officer with the management of the Rungta Colliery of the Western Coalfields Limited in its Sohagpur Area. The appointment order provided the initial appointment for three months, but the appointment was continued by a couple of extension orders till 29-10-1976 and thereafter it was extended until further order. According to Dr. Bhatnagar he started taking interest in trade union activities of the workmen employed in the Colliery and because of his interest in the union activities and sympathy towards the workmen, the management terminated the services by an order

dated 17-7-78/4-8-78. This termination order according to Dr. Bhatnagar was not acceptable to the workmen and they agitated and offered Dharna. The aforesaid termination order, according to Dr. Bhatnagar, was by way of victimisation and unfair Labour practice on the part of the management.

3. Consequent upon the termination of his services recourse was taken to the conciliation proceedings where also the attitude of the management was of said to be of non-cooperation. The matter was then referred to the Government of India who vide the aforesaid order referred this dispute to this Tribunal.

4. In the statement of claim Bhatnagar has reiterated what has been stated above.

5. The management while denying the allegations of victimisation, mala fide attitude, unfair labour practice etc. has alleged that Dr. Bhatnagar is not a workman as defined in the Act, that his total salary at the time of his initial appointment was more than Rs 500, that he had to discharge supervisory duties, that his work and conduct was not satisfactory, that Dr. Bhatnagar was not a member of the Union which espoused his cause, that Dr. Bhatnagar while in service was more interested in private practice and did not discharge his duties faithfully, that his services were terminated for the aforesaid reasons by a competent authority, that he was holding a responsible post of trust and that since the management has lost confidence in him he is not entitled to either the relief of reinstatement or of back wages as claimed.

6. It is an admitted fact that before terminating the services of Dr. Bhatnagar he was neither served with a charge-sheet nor an enquiry was held, nor has the termination order was passed a measure of punishment following an enquiry by the management. The only ground on which the termination order has been passed appears to be that Dr. Bhatnagar was not a workman as he had supervisory duties to perform and his total emoluments exceeds Rs. 500 p.m.

7. In the light of the aforesaid contentions, the first question that arises is as to whether Dr. Bhatnagar could, in the circumstances and facts of this case be treated as a workman for the purposes of the Industrial Disputes Act 1947, herein-after referred to as the Act. The word ‘workman’ has been defined in Sec. 2(s) of the Act is as under :—

“2(s)—“Workman” means any person (including an apprentice) employed in any industry to do any skilled or unskilled, manual, supervisory, technical or clerical work for hire or regard, whether the terms of employment be express or implied, and for purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, or retrenched in connection with or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any person—

- (i)
- (ii)
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who is being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature?”

From the aforesaid provisions it would be clear that every person skilled or unskilled or technical employed for work is to be treated as a workman unless he falls within any of the four exceptions specified in that Section. In the present case, it is contended by the management that as Dr. Bhatnagar was admittedly drawing a salary of more than Rs. 500 p.m. and was employed in a supervisory capacity he cannot be treated as a ‘workman’ as provided in the above reproduced Sec. 2(s) of the Act.

7. In the appointment order Ex. M/1 all that is mentioned is that he has been appointed as a Junior Medical Officer on an ad hoc temporary basis on the terms and conditions mentioned therein. There is no term or condition in the appointment order Ex. M/1 as to how supervisory functions were to be performed by Dr. Bhatnagar. Thus so far as the appointment order is concerned, it neither helps Dr. Bhatnagar nor the management to find out as to what exactly were the duties to be performed by him in his capacity as Junior Dr. with the management.

8. So far as oral evidence is concerned, Dr Bhatnagar has examined himself and no one was examined on behalf of the management. In his own statement Dr. Bhatnagar stated that he was not discharging any supervisory duties that he had no authority to draw his own pay, grant leave to any one in the dispensary and that he was only a Forwarding Officer in cases where leave was sought by any other member of the staff working in the dispensary. It was suggested to him that he was more interested in his private practice rather than in discharging his duties as a Junior Doctor in the Dispensary. Regarding the contention of supervisory functions, he was also questioned in cross-examination. He stated that he had no power to recommend any disciplinary action against the members of any staff in the dispensary who were one Ward Boy, one Nurse, one Dresser, one Compounder, one Registration Clerk and one Gardner. He admitted that he used to look after the discharge of necessary duties by the aforesaid members of the staff.

9. In the light of the contents of the appointment order and the oral evidence given by Dr Bhatnagar the question would be as to whether his duties as a Junior Doctor in the Dispensary were of supervisory nature.

10. The question as to what should be the real test for determining as to whether a person is or is not employed for discharging supervisory duties has been considered in detail by their Lordship of the Supreme Court in *Burmah Shell Oil Storage and Distribution Company of India Ltd Vs. Burmah Shell Management Staff Association (S.C.L.J. 1971 p. 367)*. After a reference to some previous decisions of the Supreme Court and some English decisions it was held (at page 374) that :

"the principle is now well settled that, for this purpose a workman must be held to be employed to do that work which is the main work he is required to do, even though he be incidentally doing other type of work."

While referring to the case of *Anand Bazar Patrika (P) Ltd. Vs. Its Workmen (1969-II-L.J. n. 670)* their Lordship held at page 375 "these few minor duties of a supervisory nature could not convert the office of Senior Clerk in charge into that of supervisor". A reference was also made by their Lordship to a decision of the Madras High Court in *Morugall Estate, Hardmet Vs. Industrial Tribunal, Madras*, and another (1964-II-L.J. n. 164). On a reference to the aforesaid cases and some other English decisions their Lordship held that in order to decide as to whether a particular person is or is not a workman one has to look to the main work which a person is required to do and if, while discharging duties attached to the main work for which he is appointed he is required to do some other incidental work also then it is the nature of the main work that should be the determining factor and not the nature of the incidental work which he is required to do.

10 In the Madras case (supra) the appointment order indicated that the Doctor concerned was to perform his duties in the Central Hospital, supervision over the work of the hospital staff, supervision of the dispensaries, malaria control work, supervision of creches and inspection of lines and quarters. In that case also it was held at page 168, that :—

"All the same, the fact that it is a technical employment for a particular purpose, because of a particular qualifications, they should not be lost sight of in determining the character of employment."

The test to be applied, to my mind, to cases of technical employment such as in this case, should be the purpose for which the employment is made, irrespective of whether the performance of the duties may or may not occupy the entire time of the employee

11. The view taken in the above case was approved by their Lordship of the Supreme Court in *Burmah Shell Oil Storage case (Supra)*. In the light of the aforesaid decisions it has, on the proved facts of this case, to be decided as to what was the main purpose for which Dr. Bhatnagar was given employment by the management. No doubt, Dr. Bhatnagar was appointed because he was a medical graduate and was eligible for appointment as a Doctor. The appointment order does not enjoin any supervisory duties on him. In a Dispensary the Doctor cannot work alone but needs the help of Ward Boys, Nurses, Dressers etc. There is no evidence that he was either to supervise the work or take any disciplinary action against them or grant leave as and when applied by any member of the staff or to perform any other supervisory duty. His main duty appears to be to look to the patients, prescribe proper treatment for them and attend to cases coming to the dispensary. Leave application Ex. M-4 was put to him on which he only forwarded it for sanction. No document has been produced to show that he by himself was competent to either grant leave or takes any action against any member of the staff. In these circumstances, I am unable to agree to the contentions of the management that Dr. Bhatnagar was appointed as a Junior Doctor with the charge of Supervisory duties. Dr. Bhatnagar, therefore, must be held a 'workman' as defined in Section 2(s) of the Act.

12. Admittedly, his services were terminated without any charge sheet followed by an enquiry. By virtue of his being in service from 6-7-1975 till 4-8-1978 he had become a permanent workman and his services could not be terminated except in accordance with the provisions of law which has not been done in this case. It is evident that the management was suspicious of the Dr. Bhatnagar being engaged in private practice and therefore treating him as an employee outside the definition of workman his services were terminated which was not justified. My finding, therefore, is that the termination of the services of Dr. A. D. Bhatnagar by the management was not justified.

13. The next question that arises for consideration is as to what relief Dr. Bhatnagar is entitled to. It is admitted by Dr. Bhatnagar that since January, 1979 he joined services of the Government of State of Madhya Pradesh. He has, however, claimed reinstatement with all back wages and consequential benefits. Since the termination order is not found justified he is entitled to the relief claimed by him. It will be upto Dr. Bhatnagar either to report for duty with the management or not, as he has already secured another job with the better scale of pay with the State Government of Madhya Pradesh. However, that is a matter for the Dr. Bhatnagar to decide.

14. In my opinion, Dr. Bhatnagar is entitled to the following reliefs :—

(a) That the management shall reinstate Dr. Bhatnagar to the post held by him i.e. the post of a Junior Doctor ;

(b) That Dr. Bhatnagar shall be paid his wages and allowances of that post from 4-8-78 to December, 1978 ;

(c) In pursuance of this order Dr. Bhatnagar shall report for duty on the post of Junior Doctor as early as possible but not later than one month from the date of the receipt of this award or publication in the Gazette of India whichever is earlier. In case he fails to report for duty as aforesaid he shall be deemed to have resigned and in that event he shall be entitled to his wages and allowances from 4-8-78 to 31-12-78 only.

(d) The management shall pay Rs 200 as costs of these proceedings to Dr. Bhatnagar and bear its own costs.

Sd|—

Dated 31-8-81

S. R. VYAS, Presiding Officer.

New Delhi, the 10th September, 1981

S.O. 2503.—In pursuance of Section 17 of Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Calcutta, in the industrial dispute between the employers in relation to the management of Messrs Kamal Basu and Company, Calcutta and their workmen, which was received by the Central Government on the 3rd September, 1981.

BEFORE MR. JUSTICE R. BHATTACHARYA MA.,B.L.,
PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, CALCUTTA.

Reference No. 8 of 1974

PARTIES:

Employers in relation to the management of Messrs
Kamal Basu and Company,

AND

Their Workmen

APPEARANCES:

On behalf of Employers—Absent.

On behalf of Workmen—Absent.

STATE: West Bengal.

INDUSTRY: Port & Dock.

AWARD

This is a reference under Section 10 of the Industrial Disputes Act, 1947. The basis of the reference is the Order of Government of India No. L-32011/14/73-P&D/LR/III dated 2nd August, 1974. The parties are Messrs Kamal Basu and Company 10/1E, Lalbazar Street, Calcutta, hereinafter referred to as the "Company" and their workmen represented by the General Secretary, West Bengal Dock and Port Mazdoor Union, hereinafter referred to as the "Union". The dispute to be decided is mentioned in the Schedule to the Order of Reference is as follows:

SCHEDULE

"Whether the following 6 demands of 20 workmen (Polish Mistries) as represented by West Bengal Dock and Port Mazdoor Union, are justified? If so, to what relief are they entitled from Messrs Kamal Basu and Company and from what date?"

DEMANDS OF THE WORKMEN

1. Wages should be paid to all workmen as per recommendations of the Central Wage Board for Port and Dock Workers at Major Ports.
2. Every workman should be paid City Compensatory Allowance and house rent allowance.
3. Every workman should be allowed the facility of Port closed holidays with wages.
4. Every workman should be allowed other festival holidays with wages as enjoyed by dock workers under the Calcutta Dock Labour Board.
5. Every workman should be issued booking slip for duty.
6. Bonus for the years 1970-71 and 1971-72 shall be paid to all workmen."

2. The reference was received by this Tribunal on 12-8-74. Thereafter notices were issued to the parties for filing written statement. It appears from the record that the company prayed for time on several occasions for filing written statement but no written statement was filed. Instead of moved the Hon'ble High Court at Calcutta for quashing the proceedings on the ground that the instant Tribunal has no jurisdiction to decide the dispute and that the dispute is not an industrial dispute. As the parties did not file any written statement this Tribunal fixed 9-1-75 as the date for peremptory hearing. That order was passed on 3-12-74. After the passing of the order the workmen filed a written statement. Thereafter a copy of the Rule issued by the Hon'ble High Court concerning the matter already mentioned was received by this Tribunal on 19-12-74. Records of the case were sent to the Hon'ble High Court. The proceedings before this Tribunal were stayed by the order of the Hon'ble High Court. Ultimately on 22-1-81 the judgment in the Rule issued by the Hon'ble High Court was received and there was a direction for decision of the points raised before the Hon'ble High Court, if necessary on evidence by this Tribunal along with the merits of the case. Thereafter notices were issued to the parties by registered post. The management was given sometime to file written statement. The notices were received by the company as well as the Union. On the next date no written statement was filed and as such there was an order for ex-parte hearing on 20-5-81. The parties were also informed by registered post about this date and again the said notices were received by both the parties. On 20-5-81 the case was taken up for ex-parte hearing and at that time the Advocate appearing on behalf of the management filed a petition for time to file written statement. On the side of the Union there was none and no step whatsoever was even taken by the Union. No reason was given by the Union for its absence on that date 18-6-81 was fixed for filing written statement by the Company on payment of cost of Rs. 51. On 18-6-81 the written statement was filed and a money order receipt for Rs. 51 was also filed by the Company. On that date also nobody on behalf of the Union appeared. The case was fixed for peremptory hearing on 27-8-81 at 10.30 A.M. Regarding this order notices was again sent to the Union by registered post and the acknowledgement shows that it was received on 11-7-81.

3. Today the case is taken up for hearing. It is now 1 PM but nobody appears either on behalf of the Company or on behalf of the Union. No step has been taken by any of the parties. No reason has been given by petition or otherwise for their absence. This dispute was raised at the instance of the workmen. It appears from the records that the Union has not been taking any interest in this case after the decision of the High Court. A date was fixed for ex-parte hearing on 20-5-81 as no written statement was filed by the Company but still on 20-5-81 the Union did not care to appear. Again 18-6-81 was fixed for filing of the written statement on payment of cost by the company and on that date also the Union did not appear before this Tribunal although registered notice was received by the Union. Thereafter today was fixed for peremptory hearing and a notice was served upon the Union but in spite of getting the notice the Union has not appeared before this Tribunal today. Clearly, therefore, the Union has not been taking any interest in this case. They remain uninterested and they are not coming forward before this Tribunal to contest in the proceedings in support of their claims. Today, of course, the company is also absent. Giving my best consideration to the facts and circumstances of the case, I hold that the Union is not interested in the dispute raised before this Tribunal in this case and that there is at present no dispute between the parties.

In the result I pass a "no dispute" award.
Dated, Calcutta the 27th August, 1981.

R. BHATTACHARYA, Presiding Officer
[No. L-32011/14/73-P&D/LR.III/D.IV(A)]

S.O. 2504.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Hyderabad, in the industrial dispute between the employers in relation to the management of Food Corporation of India, Nellore and their workmen, which was received by the Central Government on the 3rd September, 1981.

BEFORE SHRI B. PRASADA RAO, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL (CENTRAL) A1
HYDERABAD

Industrial Dispute No. 12 of 1981

BETWEEN

Workmen of Food Corporation of India, Nellore.

AND

The Management of Food Corporation of India, Nellore.

APPEARANCES:

Sri P. Ramakotaiah, President, District Factory Workers' Union, Nellore—for the Workmen.

Sri A. Padmanabha Rao, Unit Manager, Modern Rice Mill, Food Corporation of India, Nellore—for the Management.

AWARD

The Government of India, Ministry of Labour, New Delhi through Order No. L-42011/3/81-FCI/D IV.A, dated 16-6-1981 referred under Sections 7A and 10(1)(d) of the Industrial Disputes Act, 1947, the following dispute existing between the Workmen and Management of Food Corporation of India, Nellore to this Tribunal for adjudication:

"Whether the demand of the District Factory Workers Union Nellore for reimbursement by the Food Corporation of India, Nellore of the Conveyance charges for the period from 25th May, 1979 to 28th February, 1980 to the undermentioned workmen for their being deputed to work at the Raja Open Storage Depot (Nellore) is justified? If so, to what relief are they entitled?"

Names of Workmen

1. Shri G. David
2. Shri J. Francis.
3. Shri Kollapuri
4. Shri S. Ramaiah
5. Shri Sk. Mastan (N)
6. Shri N. Kotaiah
7. Shri S. K. Basha
8. Shri J. Venkamma
9. Shri Chandramma
10. Shri Ramanamma
11. Shri Patnan Mastan
12. Shri Man Raju
13. Shri Sk. Mastan

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14. Shri Venkureddy
15. Shri Sk. Mannesaheb
16. Shri L. Venkaiah
17. Shri Sk. Kalscha
18. Shri Sk. Moulshaheb
19. Shri Pedda Mastan."

2. The reference was registered as Industrial Dispute No. 12 of 1981 and notices were ordered to be issued to both the parties in response to which on 4-8-1981 both the parties have sent reply that they have settled the dispute out of the Court. On 20-8-1981 both parties represented and filed the joint Memo of Settlement dated 17-8-1981 into the Court with a request to treat as withdrawn.

3. Since the both parties have settled the dispute out of Court, I feel it proper to pass a Nil award as per the Settlement.

4. A nil Award is passed as per the Joint Memo of Settlement and copies of the Settlement are attached to this Award.

20th August, 1981.

B. PRASADA RAO, Presiding Officer.

[No. L-42011/3/81-FCI/D.IV(A)]

NAND LAL, Desk Officer

Appendix of Evidence

Sd/-

Industrial Tribunal

**BEFORE THE PRESIDING OFFICER INDUSTRIAL
TRIBUNAL (CENTRAL), HYDERABAD**

Reference No. ID No. 12/81

BETWEEN

The Workmen

AND

The Management of Modern Rice Mill of Food Corporation of India, Nellore.

With reference to ID No. 12/81 on the file of the Honourable Court, as the matter has been amicably settled outside the court, the Industrial Dispute may kindly be treated as withdrawn and settled. The same was intimated to the Honourable Court vide letter dt. 9-7-81 of Shri P. Ramakotaiah, President District Factory Workers Union, Nellore.

However, with reference to the Notice dated 4-8-81 issued by the Honourable Court, a joint declaration by both parties stating that the dispute is mutually settled is hereby filed duly signed as directed.

(CA BALAKRISHNAN)

District Manager

Food Corporation of India,
Nellore.

P. RAMAKOTAIAH, President,
District Factory Workers Union, Nellore.

New Delhi, the 11th September, 1981

S.O. 2505—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal No. 2, Dhanbad in the industrial dispute between the employers in relation to the management of Baulia Limestone Quarries of M/s. Sone Valley Portland Cement Company Limited and their workman, which was received by the Central Government on the 2-9-81.

BEFORE SHRI J. P. SINGH, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
(NO. 2), DHANBAD

Reference No. 94 of 1979

In the matter of an industrial dispute under S. 10(1)(d) of the
I.D. Act, 1947

PARTIES:

Employers in relation to the management of Baulia
Limestone Quarries of M/s. Shone Valley Portland
Cement Company Limited, I.O. Baulia, District
Rohtas and their workmen.

APPEARANCES:

On behalf of the employers : Shri S. S. Mukherjee, Advoca-
cate.

On behalf of the workmen : Shri B. Lal, Advocate.

STATE : Bihar. INDUSTRY : Limestone.

Dhanbad, 26th August, 1981

AWARD

This is a reference under S. 10 of the I.D. Act, 1947.
The Central Government by its order No. L-29-11/38/78-D.
III(B) dated 19th July, 1979 has referred this dispute to this
Tribunal for adjudication on the following terms :—

SCHEDULE

"Whether the action of the management of Baulia Lime-
stone Quarry of M/s. Shone Valley Portland Cement
Co. Ltd. at and P.O. Baulia, District Rohtas in
dismissing from service Shri Nathuni Nonia, Emp-
loyee No. 1341 with effect from 6th August, 1975
is justified? If not, what relief the workman is
entitled to."

2. The concerned workman, Shri Nathuni Nonia was sus-
pended pending final order through letter No. 1510 dated
26-6-75 addressed to him by the Quarry Superintendent of
Baulia. It was alleged in that letter than on 26-6-75 at about
9.30 A.M. Shri Nathuni Nonia and other workers at Section
III of quarry face No. 6 gharao and assaulted Shri P. C.
Jain the General Manager. Although no show cause was
demanded, Shri Nathuni Nonia himself submitted an expla-
nation denying the allegation and alleged that he was being
harassed for being representative of Baulia Quarry Mazdoor
Sangh. Shri Nathuni Nonia was thereafter dismissed by
the management by their letter dated 6-8-75 addressed to
him under the signature of the Quarry Superintendent. The
case of the workman is that no formal charge-sheet was
issued nor any explanation was demanded, and there was no
formal departmental enquiry before the punishment was
inflicted.

3. The management filed an application under S. 33(2)(b)
of the I.D. Act, 1947 before the Central Government Indus-
trial Tribunal (No. 2) Dhanbad for approval of their action
of dismissal of Shri Nathuni Nonia. The said application
was numbered as Application No. 3 of 1975. The workman
appeared there and filed his written statement. In the mean-
time an industrial dispute was raised by the Baulia Quarry
Mazdoor Sangh before the conciliation officer resulting in
the present reference. The application No. 3 of 1975 was
accordingly withdrawn. In that application No. 3 of 1975
the management had alleged that 16 workmen took part in
the gharao besides Shri Nathuni Nonia and after an enquiry
report it was ascertained that only 5 were found to be
involved in the manhandling of Shri P. C. Jain. It was fur-
ther disclosed that all the 5 workmen besides Shri Nathuni
Nonia were dismissed without any charge-sheet or enquiry
and the applications were filed in respect of all under S. 33(2)
(b) of the I.D. Act for approval of the action of the dismissal.
The case of the workmen is that all the other 5 persons were
reinstated by the management except Shri Nathuni Nonia.
This has been used by the workmen to show discrimination
on the part of the management and also to show that Shri
Nathuni Nonia was victimised for trade union activities.
According to the concerned workman he happened to be a
member of the executive committee and took leading part
in the union activities.

4. The case of the employer is that on 26-6-75 at about
9.30 A.M. work of the quarry was going on at Section III
of quarry face No. 6 when the General Manager, Shri P. C.
Jain came for inspection of work along with quarry super-
intendent and other officers. The concerned workman Shri
Nathuni Nonia was on duty. He incited the other workmen
to gharao Shri P. C. Jain and actually manhandled him and
used filthy language along with other workmen. Shri Nathuni
Nonia also attempted to push Shri Jain into the pit which
is about 100 feet deep and also snatched his umbrella. The case
of the management is that Shri Nathuni Nonia was charge-
sheeted vide letter No. 1510 dated 26-6-75 for investigating
workmen to wrongful and illegal act and also for manhandling
Shri Jain and insulting him. It was further said that although
the incident took place in presence of many workmen and
officers of the quarry, Shri Nathuni Nonia denied all the
charges levelled against him in his letter dated 1-7-75. The
management has disclosed that on the report of this incident
by the Foreman to the Quarry Supdt., investigation was done
by the Assistant Labour Welfare Officer Shri R. N. Pandey
as directed by the Quarry Supdt. The Assistant Labour
Welfare Officer in his report found Shri Nathuni Nonia guilty
of the various misconduct for which he was charge-sheeted.
On the basis of investigation report the management con-
cluded that he should be dismissed. There was no extenuat-
ing circumstance because his past record was also uncleaned.

5. According to the management the dismissal order was
passed as per provision of clause 27(e) of the Quarries Cer-
tified Standing Order which gives power to the management
to take summary decision in a case in which the competent
authority itself catches a workman red-handed in any act
or omission amounting to misconduct. The management's
case is that the order of dismissal was passed by the compe-
tent authority who was present at the time of occurrence and
saw the misconduct being committed by Shri Nathuni Nonia.
Moreover, all their witnesses have given their statements be-
fore the Assistant Labour Welfare Officer in support of the
misconduct.

6. The management have filed a number of documents in
support of their case. Ext. M1 is a report by Shri Ashok
Kumar, quarry foreman of Section III dated 26-6-75 addressed
to the quarry Superintendent. Ext. M2 is a letter No. 1510
dated 26-6-75 from the Quarry Superintendent to Shri Nathuni
Nonia. Ext. M3 is unserved registered envelope addressed
to Shri Nathuni Nonia. Ext. M4 is the explanation of the
concerned workman to the Quarry Superintendent dated 1-7-75.
Ext. M5 is the report by Shri R. N. Pandey, Asstt. Labour
Welfare Officer to the Quarry Superintendent dated 2-7-75.
Ext. M6 is letter No. 1812 dated 4-8-75 addressed by the
Quarry Superintendent to the General Manager, Shone
Valley Portland Cement Co. Ltd., Ext. M7 is a note on
Ext. M6 by the General Manager under which the dismissal
was approved. Ext. M8 is a letter of dismissal dated 6-8-75
from the Quarry Superintendent to Shri Nathuni Nonia. Then
there are Exts. M9 to M15 which are letters of various dates
from 1973 to 1975 addressed by the Quarry Superintendent
to Shri Nathuni Nonia making various allegations of mis-
conduct committed by him. Ext. M16 is the Standing Order
of the company. Ext. M17 is a notification under Section
4(a) of the Quarry Standing Order dated 24-4-75 under which
Quarry Superintendent was notified to be the competent
authority for the Shone Valley Portland Cement Co. Ltd.,
Limestone Quarry, Baulia for all purposes stated in the sub-
clause 4(a) of the Quarry Standing Order.

7. The management examined MW-1 Shri Parmanand Singh
who is the Assistant Manager of Baulia Limestone quarries
from 1961. He has spoken about the occurrence which took
place on 26-6-75 at 9.30 A.M. According to him he was
present when the General Manager, Shri P. C. Jain was ins-
pecting the quarry. His case is that Shri Nathuni Nonia came
with 5/6 persons and started talking with Shri P. C. Jain
in a heated mood. In the meantime some more people came
and surrounded the General Manager. Then Shri Nathuni
Nonia went towards the mono-cable ropeway where the
telephone was located. He disconnected the telephone and
returned running to the place where Shri P. C. Jain was
in a state of gharao. Shri Nathuni Nonia snatched the
umbrella from the hand of Shri Jain and caught hold of the
left hand of Shri Jain and started dragging him towards the
pit No. 7 the depth of which is about 100 feet. Shri Nonia
while dragging him used filthy language towards Shri Jain.

The witness has said that he and others who were in the inspection party of the General Manager intervened and got him released and then brought him to the road where his car was standing. He has said that the report of the occurrence was made by Shri Ashok Kumar, Quarry Foreman. This witness has proved most of the documents which I have mentioned above.

8. On behalf of the concerned workman no document has been filed; but 2 witnesses were examined. WW-1 is Shri Jadubans Singh, the General Secretary, Baulia Quarry Mazdoor Sangh in 1974/75. He has come to say that Shri Nathuni Nonia the concerned workman was an executive committee member of his union in 1974/75 and continues to be even now. He looks after the grievances of the members of the union in relation to the working conditions. With regard to notification No. Ext. M-17 his evidence is that no copy of such a notification was given to the union. To his knowledge the power of dismissal of a workman in Baulia quarry lies with the Quarry Manager with the approval of the Works Manager and this has been specified in the Standing Order. WW-2 is Shri Nathuni Nonia who has denied the occurrence as deposed by MW 1.

9. The above is the nature of evidence adduced in this case. It is apparent that no domestic enquiry was held in this case. The misconduct as alleged is covered under clause 25 of the Certified Standing Order. Action for misconduct has been provided in clause 26, and clause 27 provides the procedure for such action as provided in sub-clauses (a), (b), (c), (d) and (e) of clause 27. Clause (a) says that a notice stating the complaint against the workman must be issued to him in writing. This was done. Clause (b) says that he must be given reasonable opportunity and time to offer explanation in his defence. No explanation was demanded from him, but the concerned workman offered an explanation. For the purpose of clause (b) we may take it that it was complied with. Clause (c) says that enquiry or examination of the case has to be held by competent authority or by a representative of the company or a committee nominated by competent authority. The management's case is that the competent authority appointed the Asstt. Labour Welfare Officer to make an enquiry. He also submitted his report. Clause (d) says that if a workman was found guilty by the competent authority, the result should be issued to the workman in writing and clause (e) deals with action taken by the competent authority. Now with regard to clause (c) it has been contended that no opportunity was given to the concerned workman to defend himself. Obviously, the intention of clause (b) is to give a reasonable opportunity to the offender to give his explanation and defence. Obviously, the enquiry under sub-clause (e) is intended to be a domestic enquiry under which the witnesses should have been examined in presence of the delinquent and he should have been afforded an opportunity to cross-examine the witnesses and to give his defence. None of these things were done. It appears that although initially the procedure adopted by the management was that of a domestic enquiry, it was not concluded as such. The result is that the concerned workman was dismissed without any domestic enquiry.

10. It has been submitted before me that in this case action had been taken by the management under the proviso to clause 27 which I am quoting below for the sake of ready reference:

"Provided that when a notice or charge-sheet of an enquiry is issued to workman and he evades service thereof the notice shall be sent to him by registered post at his recorded address (with a copy in Hindi pasted in the notice board) and the enquiry shall be proceeded with as per notice even if the workman does not turn up as required without sufficient cause and further that in a case in which the competent authority itself catches a workman red-handed in any act or omission amounting to misconduct it may take summary decision."

Reliance has been placed by the management on the last portion of the proviso which says that if the competent authority catches a workman red-handed in any act of misconduct, it may take summary decision. This is a very large power and the purpose is that if in the presence of the competent authority any misconduct takes place, he need not go into any of the provisions of clause 27 which require normally for a domestic enquiry. The argument advanced

on behalf of the management is that the Quarry Superintendent actually happened to be the competent authority and he was present when Shri P. C. Jain, the General Manager was gharoad, manhandled, abused and an attempt made to push him into pit about 100 feet deep. Shri S. S. Mukherjee, Advocate appearing on behalf of the management has argued that although the management started taking action under various sub-clauses of Clause 27, of the Standing Order, it was decided at a later stage that the competent authority should exercise his power under the proviso of that clause which does not require following of the procedure of the domestic enquiry. According to him the starting of domestic enquiry can in no way bar the exercise of powers of competent authority under the aforesaid proviso of clause 27 which authorises him to take summary decision. I must say that the proviso to clause 27, specially the last portion dealing with summary power is extraordinary, usual and very harsh. I wonder how it has kept into the certified standing order of the company which obviously has been formulated with the consent of the union. As it is, the powers are there and the same could be used by the competent authority.

11. It has been contended on behalf of the workmen that the notification, Ext. M-17 conferring power of competent authority has been fabricated for the purpose of this case. It was pointed out that this document was not filed in the earlier Application No. 3/75 of this Tribunal. WW-1 has said that the Quarry Manager is the competent authority under this standing order clause 4(f). This clause 4(f) says that ordinarily the Quarry Manager would be the competent authority. Ext. M17 is in supersession of the previous order in exercise of the power under clause 4(a) and it is dated 24-4-75. It means that Ext. M17 was issued about 2 months before this occurrence. In this case all actions have been taken by the Quarry Superintendent instead of the Quarry Manager. On behalf of the workmen it has not been alleged that the Quarry Manager was in any way opposed to any move on the part of the management to victimise the concerned workman. So, just because the document was filed late in this reference, it cannot be said to be a forged document used for the purpose of this case.

12. Now turning to the main point of occurrence it is noteworthy that the Quarry Superintendent who took all actions has not been examined. The Assistant Foreman of the quarry who reported the matter to the Quarry Superintendent has also not been examined. The Assistant Labour Welfare Officer, Shri Pandey who made investigation has also not been examined. Shri P. C. Jain, the General Manager has not come to depose in this case. In a reference like this the management is bound to substantiate the case of dismissal and this opportunity was afforded to the management by this court. But only one witness MW-1 Shri Parmand Singh, the Assistant Manager of the quarry has been examined. In his cross-examination he has said that he was not examined by the investigating officer, Shri Pandey. The witness has further admitted that he noted in his diary the details of this incident and his diary would be in the office. This diary was not produced in order to show that such an occurrence really took place. It will therefore, appear that the occurrence has not been proved by any competent witness.

13. With regard to the question of inflicting the punishment of dismissal the management has filed a number of documents to show the previous conduct of Shri Nathuni Nonia. It appears that in none of these incidents any domestic enquiry was held nor any punishment was accorded. According to the workman he never received any such letters which have been filed in this case in order to justify the punishment of dismissal.

14. Thus having considered all aspects of the matter I hold that the action of the management of Baulia Limestone Quarry of M/s. Shone Valley Portland Cement Co., Ltd., At and P.O. Baulia, District Rohtas in dismissing from service Nathuni Nonia, Employee No. 1341 with effect from 6th August, 1975 is not justified. Consequently, Shri Nathuni Nonia is entitled to be reinstated in his job with effect from 6th August, 1975. He will also be entitled to all the back wages and other emoluments w.e.f. 6th August, 1975.

This is my award.

J. P. SINGH, Presiding Officer
[No. I-29011/38-78-D III(B)]

S.O. 2506.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Madras in the Industrial dispute between the employers in relation to the management of M/s. Travancore Titanium Products Limited, Trivandrum and their workmen, which was received by the Central Government on the 1st September, 1981.

BEFORE THIRU T. SUDARSANAM DANIEL, B.A., B.L.,
INDUSTRIAL TRIBUNAL, MADRAS

(Constituted by the Government of India)

Saturday, the 22nd day of August, 1981

Industrial Dispute No. 10 of 1981

(In the matter of the dispute for adjudication under section 10(1)(d) of the Industrial Dispute Act, 1947 between the workmen and the Management of M/s. Travancore Titanium Products Limited, Trivandrum)

BETWEEN

The workmen, represented by The Secretary, Titanium Workers Union, Kochuveli, Trivandrum-695021.

AND

The Managing Director, M/s. Travancore Titanium Products Limited, Kochuveli, Trivandrum-695021.

REFERENCE:

Order No. L. 29012/26/80-D.III.B, dated 17-1-1981 of the Ministry of Labour, Government of India, New Delhi.

This dispute coming on for final hearing on Saturday the 1st day of August, 1981, upon perusing the reference, claim and counter statements and all other material papers on record and upon hearing the arguments of Thiruvallalgar R. Ganesan and P. Gunaraj, counsel for the workmen and of Thiru K. V. R. Shenoi for Menon and Pai, Advocates for the Management and having stood over till this day for consideration, this Tribunal made the following:

AWARD

This is an Industrial Dispute between the employers in relation to the Management of Messrs Travancore Titanium Products Limited, Trivandrum, and their workmen, referred by the Government of India, in their order No. L. 29012/26/80-D.III(B), dated 17-1-1981, Ministry of Labour, for adjudication by this Tribunal, in respect of the following issue:

"Whether the employers of M/s. Travancore Titanium Products Limited, Kochuveli, Trivandrum were justified in denying the wages, continuity of service and other incidental benefits to Sarvashri K. Rajendran and K. Surendran, Work Assistants for the period from 17-3-1979 to 21-12-1979? If not, what relief they are entitled to?"

The parties were served with the summons.

The facts leading up to the dispute are not in controversy. The Management is Messrs. Travancore Titanium Products Limited, Kochuveli, Trivandrum-695021, Kerala State. The reference made by the Government of India, Ministry of Labour relates to two employees namely, K. Rajendran and K. Surendran employed as Work Assistants by the Management. The Management is a Government Company incorporated under the Company's Act. It is a public sector undertaking of the Kerala State Government. The Company has a factory at Trivandrum producing Titanium Di-Oxide. It is a chemical plant. The management has reserved 30 per cent of the post in the unskilled category for eligible local candidates belonging to the families in the locality where the factory is situated. On 15-10-1977 the management called for applications from such candidates for the post of Work Assistants. Ex. M-1 is the copy of notice published by the Management. The two workmen concerned in the dispute

made applications for the post of Work Assistant vide Ex. M-2 and M-3, dated 28-10-1977. These two workmen also produced locality status certificate from the Tahsildar, Trivandrum, vide Ex. M-2A and Ex. M-3A dated 25-6-1977. The management gave employment to these workmen on 8-9-1978 vide Ex. M-4 and M-5. It should be remembered that the terms and conditions of appointment of these two workmen are clearly mentioned in Ex. M-4 and M-5. Among other conditions contained therein clause 9 of Ex. M-4 and M-5 clearly mention that their continuance in service will also be subject to further verification of the authenticity of their "Locality Status". Accepting the terms and conditions of appointment stipulated by the management under Ex. M-4 and M-5 both these workmen reported for duty on the forenoon on 18-9-1978.

After these workmen joined services of the management subject to the terms and conditions indicated in Ex. M-4 and M-5 on 20-9-1978 the management addressed the Commissioner of Police, Trivandrum city vide Ex. M-6, M-6A, M-7 and M-7A. The Commissioner of Police, Trivandrum city, made enquiries with regard to these two workmen and sent in reports Ex. M-8 and M-9 on 18-12-1978. From these two reports it is seen that the permanent address furnished by these two workmen in Col. 3 of the attestation form Ex. M-6A and M-7A was wrong. That would mean that the locality certificate produced by these two workmen was incorrect and false, inasmuch as under clause 9 of their letters of appointment Ex. M-4 and M-5 their provisional appointment was terminated by the management by order, dated 17-3-1979 vide Ex. M-10 and M-11. Also on 13-11-1979 the petitioner Union namely, Titanium Worker's Union, Kochuveli, Trivandrum-21, had enclosed an application by these workmen namely, Ex. M-12A, dated 12-11-1979 and requested the management for a re-verification by the police regarding their place of residence. Accordingly, the joint application of these workmen was forwarded to the Commissioner of Police, Trivandrum by the management on 16-11-79 vide Ex. M-13. Ex. M-14 is the further report submitted by Commissioner of Police, Trivandrum city on 26-11-1979. On the strength of the subsequent report of the Commissioner of Police, the management decided to reinstate these two workmen into the services of the company vide Ex. M-15 and M-16. And both these workmen re-joined the services of the management on 22-12-1979. Thus it is evident that these two workmen were not in the employment of the management from 17-3-1979 to 21-12-1979. The claim of these workmen is that they would be entitled to wages with continuity of service and other incidental benefits even for this period from 17-3-1979 to 21-12-1979. The stand of the management is that the two workmen had been given continuity of service. So, the crucial question that remains to be determined is whether these two workmen would be entitled to wages and other benefits for the period from 17-3-1979 to 21-12-1979.

It is common ground that the services of these two workmen were terminated on 17-3-1979. Both these workmen had entered the services of the management on 18-9-1978. Both these workmen had agreed to the terms and conditions of employment laid down in the appointment order Ex. M-4 and M-5. Therefore, it has to be considered whether the termination of services of these workmen is violative of the terms and conditions of employment mentioned in Ex. M-4 and M-5. At this stage it will be useful to point out that the management has reserved 30 per cent of the post in the unskilled category for eligible local candidates belonging to the families in the locality where the management factory is situated and who are adversely affected due to the discharge of an effluents from the factory into the sea nearby. This is also made clear in the notice issued by the management calling for applications exclusively from among the local candidates belonging to the families affected adversely, vide Ex. M-1. Ex. M-1 clearly mentioned that any application should be accompanied by a locality certificate from the Tahsildar. Ex. M-2A and M-3A are copies of the certificate issued by Tahsildar, Trivandrum on 25-6-1977. It should also be borne in mind that these two workmen are brothers. From the certificate issued by the Tahsildar, Trivandrum it can be said that these two workmen are residents of PUTHUVAIPUTHEN VEEDU, Kadakompaalv village, Trivandrum Taluk. If this is accepted then both these workmen acquire the local status to be entitled to apply for the post reserved by the management. As a matter of fact, only on the strength

of this certificate issued by the Tahsildar Trivandrum which was enclosed along with the application made by the two workmen the management held these two workmen as local candidates and accordingly gave the order of appointment Ex. M-4 and M-5. But in clause 9 of Ex. M-4 and M-5 it has been categorically stated that the continuance in service of these two workmen will also be subject to further verification of the authenticity of their locality status. And in case it is proved that they have produced the false statement of certificate of their locality status at the time of their application to the post their service will be summarily terminated without notice. I had already indicated how the management referred the case of these workmen to the Commissioner of Police, Trivandrum city for verification vide Ex. M-6 and M-7. Ex. M-7A and M-8A are the statements given on oath by these two workmen at the time of their joining the services of the management on 18-9-1978. Ex. M-9 is the report submitted by Commissioner of Police, Trivandrum city, dated 18-12-1978. According to this report these two workmen are residing in the address furnished by them only temporarily with one of their distant relatives and further more the permanent address of these two workmen lies at Kalathukal, Karakulam village, Nedumangadu Police Station Limits. Apparently, if these two workmen are held to be residents of that village within the Nedumangadu Police Station Limits, then they cannot be considered to be locals as far as their employment under management is concerned. Therefore, it was that the management had no option but to hold that these two workmen had no locality status to be employed by the management. The termination of these two workers took place on 17-3-1979. According to clause (1) of Ex. M-4 and M-5 the appointment order, the two workmen were placed on probation period of 6 months from the date of the joining the company. Admittedly both of them had joined the company on 18-9-1978. And therefore, their period of probation would last for 6 months upto 18-3-1979. But the order of termination has been issued on 17-3-1979 even before the completion of the period of the probation of 6 months. As per clause (2) of Ex. M-4 and M-5 during the period of probation the company reserves the right to terminate their services at any time without assigning any reason. Therefore, the action of the management can well be supported even under this clause contained in Ex. M-4 and M-5. That apart in view of the fact that according to the materials available that the management as furnished by the Commissioner of Police, Trivandrum city Ex. M-8, the management was justified in holding that these two workmen had no proper locality status to be appointed as workmen under the management. In the circumstances by no stretch of imagination can it be said that the termination of the services of these two workmen by the management on 17th March, 1979 is illegal or un-justified.

The concerned two workmen quietly acquiesced in the order of their termination on 17-3-1979. However about four months later on 10-7-1979, these two workmen made demand on the management for their reinstatement in the services of the management. However, later on 12-11-1979 both these workmen made a joint application Ex. M-12A addressed to Commissioner of Police, Trivandrum city, Trivandrum and this application was forwarded to the management by the Petitioner Union on 13-11-1979 under Ex. M-12. In Ex. M-12A the joint application made by these two workmen they have specifically mentioned that they are prepared to adduce relevant evidence to prove that they are residing in TC. No. 31/669 Vettukad and that the earlier police report apparently referring to Ex. M-8, is incorrect. Promptly, the management forwarded the joint application Ex. M-12A to the Commissioner of Police, Trivandrum city, Trivandrum vide Ex. M-13. Ex. M-14 is the subsequent report sent by Commissioner of Police, Trivandrum city. Even this report Ex. M-14 indicates that the name of these two workers were included in the Ration Card of the family residing at TC 31/669/B. Vettukad, Trivandrum on 31-3-1979. No doubt, the management magnanimously held that at any rate from 31-3-1979 these two workmen can be held to have locality status to be employed by the management. And therefore, without further delay, the management on 14-12-1979 have reinstated both these workmen into service. And accordingly both these workmen re-joined duty on 22-12-1979. From Ex. M-14 it can be gathered that these two workmen are residing at "Puthuval Puthen Veedu" TC. 31/669-B, Vettukad, Trivandrum from 1978 and that their names are included in the ration card in the family residing in the above address on 31-3-1979. Therefore, it is manifest that the names of these

two workmen have been included in the ration card only on 31-3-1979 after the services were terminated on 17-3-1979 by the management. Most probably, on the strength of their employment under the management from 18-9-1978 up to 17-3-1979, their names had been included in the ration card of the family residing at "Puthuval Puthen Veedu" TC. 31/669-B, Vettukad, Trivandrum on 31-3-1979. The notification calling for application had been made by the management on 15th October, 1977 vide Ex. M-1 and the application made by these two workmen Ex. M-2 and M-3 is dated 28-10-1977. Therefore, both by the time of Ex. M-1 and also M-2 and M-3 the two workmen were not permanent residents at the address furnished by them in Ex. M-2 and M-3. Moreover, even from the 2nd report Ex. M-14 it can be said that the result of the police verification was that they are not permanently residing at the above given address but are residing only temporarily in the above address. Even in Ex. M-14 it is further asserted as under the earlier report Ex. M-8 that the permanent address furnished in Col. 3 in the attestation form is not correct. That apart, it is also made clear in Ex. M-14 that even today the permanent address of these two workmen lies elsewhere in a village in Nedumangadu Police Station Limits. In the circumstances, the action of the management is not only bona fide but also quite gracious. In as much as the workmen are bound by the terms and conditions of the employment under Ex. M-4 and M-5, it is unnecessary to refer to the standing orders applicable to the employees of the management. Suffice for me to point out that the standing order cannot be made applicable because according to the standing order Ex. W-2, a probationer is one who is provisionally employed to fill the permanent post and has not complete of the 3 months service. But in Ex. M-4 and Ex. M-5 it is specifically stipulated that the probation will last for a period of 6 months from the date of joining the duty. On the facts placed it is abundantly clear that on the date of the calling for application by the Management namely, Ex. M-1 and also on the date of the application by these two workmen Ex. M-2 and M-3 and also on the date of joining the services of the management on 18-9-1978, the two workmen are not proved to have locality status and as such even their initial appointment can be held to be void ab-initio. However, the management was pleased to treat the period from 7-3-1979 up to 21-12-1979 as service under the management. It is well-known principle that no pay for no work. Admittedly from 17-3-1979 up to 21-12-1979 none of the two workmen had actually worked under the management. Under these circumstances the management was perfectly justified in treating the period from 17-3-1979 till 21-12-1979 as on loss of pay. No doubt, the period from 17-3-1979 up to 21-12-79 will count for service of the workmen under the management as conceded by the management. On the facts placed neither the workmen would be entitled to any other relief prayed for by them.

In the result, an award is passed holding that the management was justified in denying the wages and other incidental benefits to these two workmen from 17-3-1979 to 21-12-1979. However, the period from 17-3-1979 to 21-12-1979 will count for service of the workmen under the management. In the peculiar circumstances, I direct the parties to bear their respective costs.

Dated this 22nd day of August, 1981.

T. SUDARSANAM DANIEL, Presiding Officer
[No. L-29012/26/80-D.III(B)]

List of Witnesses and Exhibits

WITNESSES EXAMINED

For both sides : None.

DOCUMENTS MARKED

For Workmen

W1/13-10-80—Conciliation failure report.

W2/13-10-80—Standing orders for workmen of the Company.

For Management

M1/15-10-77—Notice of the Management inviting applications for the posts of canteen mazdoor and Works-Assistant (True Copy).

M2/28-10-77—Application of Thiru K. Rajendran for the post of Work Assistant.

M2(a)/25-6-77—Community and Nativity certificate issued to Thiru K. Rajendran by the Tahsildar. (True copy).

M3/28-10-77—Application of Thiru K. Surendran for the post of Work Assistant.

M3(a)/28-10-77—Community and Nativity certificate issued to Thiru K. Surendran by the Tahsildar. (True copy).

M4/8-9-78—Appointment order issued to Thiru K. Rajendran. (True copy).

M5/8-9-78—do—Thiru K. Surendran (True copy).

M6/20-9-78—Letter from the Management to the Commissioner of Police, Trivandrum city for verification of character and antecedents of Thiru K. Rajendran.

M6(a)/18-9-78—Form giving particulars of Thiru K. Rajendran, (Annexure to Ex. M-6).

M7/20-9-78—Letter from the Management to the Commissioner of Police, Trivandrum city for verification of character and antecedents of Thiru K. Surendran.

M7(a)/18-9-78—Form giving particulars about Thiru K. Surendran, (Annexure to Ex. M-7).

M8/18-12-78—Verification report from the Commissioner of Police, Trivandrum city relating to Thiru K. Rajendran.

M8(a)/18-9-78—Form giving particulars about Thiru K. Rajendran.

M9/18-12-78—Verification report from the Commissioner of Police, Trivandrum city relating to Thiru K. Surendran.

M9(a)/18-9-78—Form giving particulars about Thiru K. Surendran.

M10/17-3-79—Termination order issued to Thiru K. Rajendran, (True copy)

M11/17-3-79—do—Thiru K. Surendran (True copy)

M12/13-11-79—Letter from the Union to the Management requesting to forward the application of Thiruvallargal K. Surendran and K. Rajendran for re-verification by Police regarding their place of residence.

M12(a)/12-11-79—Application of Thiruvallargal K. Surendran and K. Rajendran to the Commissioner of Police, Trivandrum city for re-verification.

M13/16-11-79—Letter from the Management to the Commissioner of Police, Trivandrum forwarding Ex. M-12 (a) for necessary action (True copy)

M14/26-11-79 Re-verification report from the Commissioner of Police, Trivandrum city relating to Thiruvallargal K. Surendran and K. Rajendran.

M15/14-12-79—Order of the Management re-instating Thiru K. Rajendran into service, (True copy)

M16/14-12-79—do—Thiru K. Surendran -do-

T SUDARSANAM DANIEL, Presiding Officer

New Delhi, the 17th September, 1981

S.O. 2507.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal No. 2, Dhanbad, in the industrial dispute between the employers in relation to the management of Pyrites, Phosphates and Chemicals Limited, P. O. Amjhore, Distt. Rohtas and their workmen which was received by the Central Government on the 5-9-81.

BEFORE SHRI J. P. SINGH, PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) DHANBAD

Reference No. 13. of 1980

In the matter of an industrial dispute under S. 10(1)(d) of the I. D. Act, 1947.

PARTIES :

Employers in relation to the management of M/s Pyrites Phosphates and Chemicals Limited, P. O. Amjhore, District Rohtas and their workmen.

APPEARANCES :

On behalf of the employers—Shri T. P. Choudhury, Advocate.

On behalf of the workmen—Shri Lalit Burman, Secretary, Amjhore Khan Mazdoor Union, Amjhore.

State : Bihar Industry : Phosphates and Chemicals.

Dhanbad, 31st August, 1981.

AWARD

This is a reference under S. 10 of the I.D. Act, 1947 The Central Government by its order No. L-29012/10/79-D.II.B dated 15th July, 1980 has referred this dispute to this Tribunal for adjudication on the following terms :

SCHEDULE

"Whether the action of the management of M/s Pyrites Phosphates and Chemicals Limited, P. O. Amjhore, District Rohtas in refusing to reinstate Shri Mukhdeo Singh, F.B. No. 1864 Mazdoor is justified? If not, to what relief the employee is entitled?"

2. Shri Mukhdeo Singh, mazdoor, F.B. No. 1864 came in the employment of Pyrites, Phosphates and Chemicals Limited (PPCL) Amjhore on 6-1-1968. On account of certain facial injury received in the course of duty he was on sick leave from 23-4-76 to 30-4-76. He was admitted in the company's hospital on 23-4-76 at 10.00 A.M. and discharged on 24-4-76 at 5 P.M.

3. On 28-4-76 the security officer of the company got information from Hindustan Housing factory (a contractor of the company) that three sections of G.I. Pipes were stolen from water pipeline. The security officer started investigation and received information through confidential source on 29-4-76 that the stolen pipes were buried in the sand in the nearby Bakua Nalla. In the evening of 29-4-1976 Shri Pradeep Singh, head jamadar of the security department was instructed to keep an watch with Shri Laxman Singh, watchman. The security officer reached the spot at about 7.30 P. M. along with some other guards and he was informed that 3 persons had already visited the site and after seeing the stolen property had gone towards the road. The security officer then instructed the head jamadar to conceal themselves near that area. At about 8.30 P.M. 3 persons came to the site and started taking out the pipes. They were about to carry the pipes when the watchmen and the jamadar jumped and surrounded them and caught them. One of the persons caught was Shri Mukhdeo Singh, the concerned workman. The matter was reported to the police who took them in custody, and a case was registered against them. The matter was also reported to the management and Shri Mukhdeo Singh was also charge-sheeted for misconduct.

4. In reply to the charge sheet levelled against him Shri Mukhdeo Singh replied that he was irrigating his land which was about 1 bigha away when he heard halla. Out of curiosity he went there and was caught by the security guards. The reply was found to be unsatisfactory. A domestic enquiry was held in which he was found to be guilty of misconduct. The management considered the report and passed an order of dismissal.

5. In the criminal case instituted against the concerned workman and 2 others the trial Magistrate found them guilty, convicted them and passed a sentence. On appeal all the 3 were acquitted on the technical ground that the company had not produced documents to show that the pipe in question had been loaned out by the company to M/s Hindustan Housing Factory. The concerned workman represented before the management for reinstatement on the ground of acquittal but the management refused. Thereafter an industrial dispute was raised, and since the conciliation failed, this reference was made.

6. The management made a prayer in this court for a preliminary hearing on the question as to whether the domestic enquiry leading to the dismissal of the concerned workman was fair and proper. At the time of hearing Shri Lalit Burman representing the workman has said that he would not challenge the fairness and propriety of the domestic enquiry and preferred to argue the case on merit on the evidence already on record. Accordingly, the documents of the parties were marked on admission. For instance the charge-sheet is Ext. M1. Ext. M2 is the reply of the charge-sheet. Ext. M3 is show cause notice dated 21-1-77 Ext. M4 is another application of the concerned workman dated 31-1-77 to the Personnel Officer. Ext. M5 is office order dated 9-2-77. Ext. M6 is a letter dated 19-2-77 forwarded to Chief Mining Engineer by Shri K. P. Chakravorty, Secretary of the company. Ext. M7 is a forwarding letter dated 23-3-77 Ext. M8 is a letter dated 29-3-77 sent by Shri P. Sen, Personnel Officer to the Secretary, PPC Ltd. Ext. M9 is enquiry proceeding and Ext. M10 is enquiry report. Ext. M11 is a note of Shri I. Kumar, CME, dated 21-1-77 Ext. M12 is certified copy of judgment of Judicial Magistrate, Rohtas. Ext. W1 the judgement of the Addl. Session Judge, Arrah under which the concerned workman and 2 others were acquitted and the conviction set aside.

7. It will appear from the wording of the reference that the dispute rests on the question as to whether the concerned workman should have been reinstated by virtue of acquittal by the Appellate Court. I must point out here reinstatement cannot be done without setting aside the order of dismissal and therefore it becomes pertinent to go into the question as to whether the dismissal was justified or unjustified. The law is settled that mere acquittal by a criminal court does not by itself justify the order of reinstatement. The criminal court has to decide as to whether a crime has been committed and if the crime has not been proved according to law the result is acquittal. But in a departmental proceeding the essence of the charge is misconduct and although there may not be adequate proof of a criminal intent on the part of the workman, the misconduct may yet be proved and the workman may be dismissed for a proved misconduct. This position, however, is true that if on facts and law the case has been failed against the workman, the employer is bound to reinstate the workman on the basis of the criminal court judgement.

8. It will appear that in this case we have taken into evidence the documents relating to the domestic enquiry in order to see if the dismissal is justified. We have also taken into evidence the two judgements of the criminal court placed by the parties on the record. Now with regard to the criminal court judgement it is noteworthy that the Magistrate who tried this case found that the concerned workman along with 2 others were found removing G. I. Pipes belonging to the company. He also rejected the defence plea of one of the acquitted (not the concerned workman) that G. I. Pipes belong to him. The Appellate Court considered the judgement and the order of conviction recorded by the Magistrate. The trial Court had held on the basis of the evidence of Sectional Officer, Hindustan Housing Factory (PW-9) that the pipes in question belong to P.P.C. Ltd. which was loaned to Hindustan Housing Factory. It came out in evidence that the Hindustan Housing Factory is also a public undertaking which was engaged in construction of houses for P.P.C. Ltd. It was made clear that some pipe lines were laid for supply of water by Hindustan Housing Factory of which the materials were supplied by P.P.C. Ltd. The learned Appellate Court referred to the evidence of PW-9 and said in paragraph 4 of the judgement that there were documents available in the office to show that loan of pipes were made by the P.P.C. Ltd. to Hindustan Housing Factory. The learned Judge felt that in a case under S. 414 I.P.C. it was necessary to prove that the pipes belonged to P.P.C. Ltd. and that it was given on loan to Hindustan Housing Factory. The learned Appellate Court in paragraph 5 of the judgement observed that in a case under S. 414 I.P.C. the prosecution has necessarily to prove that the articles in question were stolen property. There was no report of theft of stolen property before the police. Thus, on these two points the case under S. 414 I.P.C. was not established in his opinion and he ordered acquittal of the accused under S. 414 I.P.C.

9. I must mention that the Appellate Court judgement has to be regarded as final so far as criminal trial of this case is concerned. The G. I. Pipes were regarded as stolen property which had been first taken out of possession of the company and then subsequently found in possession of the three acquitted persons including the concerned workman. The learned trial Court accepted the evidence of PW-9 that the P.P.C. Ltd. had loaned the pipes to the contractor, Hindustan Housing Factory which had laid the pipe lines underground and which had been removed the pipes from the place of concealment. The learned Appellate Court did not accept the evidence of PW-9 as sufficient to establish the ownership of the pipes and so he did not consider the removal of the pipes from the nulla by the acquitted persons to be enough evidence to warrant a conviction under S. 414 I.P.C. But nevertheless, the 3 persons including the concerned workman were seen removing pipes from the nulla. This has not been rejected by the Appellate Court which the learned trial court established to be a fact. The concerned workman did not raise a plea that the pipes belong to him or to either of the two accused with him. So, all we can say on the basis of the Appellate court judgement is that the charge under S. 414 I.P.C. formed against the concerned workman was not established according to law. That does not mean there has been a clear acquittal of the concerned workman. The best reading of the judgement does not go beyond the benefit of doubt. It is, therefore, clear, that on the basis of the judgement alone the concerned workman is not entitled to reinstatement.

10. Now we have to see whether the dismissal of the concerned workman was justified. In this case the charge is that the concerned workman with others was found removing a stolen pipe. He was caught red handed on 29-4-76 at about 8.30 P.M. by the security personnel of the company. The plea taken by the concerned workman in his reply in Ext. M2 is that on 29-4-76 at about 7.00 P.M. he was irrigating his rice field when he heard hulla. He went there and was suddenly caught by Shri Laxman Singh, watchman. According to him he had nothing to do with stealing of the pipes. The show cause was considered by the Chief Mining Engineer who found it to be unsatisfactory and he ordered Shri R. K. Puri to be the enquiry officer and Shri Juyal to be the management representative.

11. At the enquiry stage Shri B. P. Juyal was the first witness. He was security officer of the company since 10th April, 1974. On 28-4-76 he got information from Hindustan Housing Factory that three sections of G. I. conduit pipes of 2 inch diameter and approximately 20 feet in length had been stolen from the water line. He made some confidential enquiry from his contacts in the neighbouring villages and learnt on 29-4-76 in the morning that 3 such pipes had been buried in the Bakua Nalla under the sand. The same evening at about 6.00 P.M. he detailed Shri Pradeep Singh, head jamadar with Shri Laxman Singh to keep watch over the spot from a distance. The same evening at about 7.30 P.M. he reached the site and learnt from Shri Pradeep Singh that 3 persons had already visited the spot and after seeing the stolen property had gone towards the road. He instructed Sub-Inspector, Shri S. P. Choubey, Shri Pradeep Singh and Jogeshwar Prasad, head jamadars and a number of watchmen to conceal themselves in the neighbourhood and to keep watch. At about 8.30 P.M. 3 persons came to the site and took out all the 3 pipes and were ready to carry them when the security personnel surrounded them and caught them. The concerned workman Shri Mukhdeo Singh was among them and was identified by the security personnel. He informed the Officer-in-Charge of the Police at post Amjhore who took them into custody and registered a case against them. He also reported the matter to the management and the management proceeded departmentally against the concerned workman. Shri Juyal was not cross-examined by Shri Mukhdeo Singh who simply signed the recorded statement.

12. Shri Jogeshwar Prasad, Head jamadar was the next witness. He has been working in the security department of P.P.C. Ltd. since 1967. By the order of the security officer he arranged a special party for duty in the evening of 29-4-76. At about 7.30 P.M. he with his party accompanied the security officer and went to Bakua Nalla. 3 pipes were found in Bakua Nalla hidden. Thereafter as directed the

security party to hide themselves on all the three sides. After some time 3 persons came from the direction of the East and started removing the pipes. Those 3 persons started moving with the pipes towards East when they were surrounded and apprehended. The witness was directed by the security officer to go to the police out post. The culprits were handed over to the police. The FIR was lodged by Shri Choubey, Sub-Inspector of the security and the pipes were seized. There was a very short cross-examination of this witness in which the witness has said that when culprits had gone about 10 yards they were surrounded and caught.

13. The next witness supported the evidence of Shri Juval fully and he was not cross-examined. Thereafter Shri Paresh Nath Mishra, Shri Rambarai Mishra, Shri Rambachan Singh, security guards were examined and they supported the case of the management about apprehending the concerned workman and 2 others in their act of removing the G.I. pipes from Bakua Nallah.

14. Shri Choubey, Sub-Inspector is the next witness. On 29-4-76 he learnt that pipes had been stolen and hidden in Bakua Nallah. To keep watch on these pipes Shri Pradeep Singh, head jamadar, Shri Laxman Singh, watchman were deputed. He along with others reached the spot at about 7.30 P.M. and learnt that 3 persons had come and inspected the pipes and had gone back. The security party hid themselves in bushes. At about 8.30 P.M. 3 persons came and started removing the pipes and as they left with the pipes, they were surrounded and caught. The police was informed and the culprits were taken into custody. He was cross-examined but nothing important had been taken in the cross-examination to mention here.

15. The next witness is Shri Laxman Singh. He has supported the occurrence fully. In cross-examination nothing has been taken to justify even the defence case. I may mention here that according to the show cause given by the concerned workman, Shri Laxman Singh was responsible for involving the concerned workman. The general plea is that Shri Laxman Singh was not pulling on well with the concerned workman. But on this point nothing has been elicited from Shri Laxman Singh in cross-examination.

16. On behalf of the concerned workman only one witness was examined, viz. Shri Ram Bachan Singh of village Namadhi. His evidence is that he and Shri Mukdeo Singh were operating pump at about 7 P.M. on 29-4-76 when some noise was heard. Shri Mukdeo Singh left him saying that he was going to see the reason for this noise. He also asked him to look after the pump. He remained on the pump for about one hour and then came to know that Shri Mukdeo Singh had been taken into custody. Now with regard to the evidence of this witness it is pertinent to note that in his show cause the concerned workman did not mention that he was operating the pump with this witness Shri Ram Bachan Singh. The concerned workman has not examined himself in the proceeding to corroborate the evidence of Shri Ram Bachan Singh. But apart from all this, the noise was heard by this witness, Shri Ram Bachan Singh at about 7.00 P.M. and one hour after he learnt that Shri Mukdeo Singh had been arrested. The witness does not say how he learnt about it. It will appear that the time given by this witness is not correct, because there was no occasion for a hulla at about 7.00 P.M. The evidences of the security party show that they had secretly approached at Bakua Nalla and were laying in wait for the culprits to come and to remove the pipes. Now, if there was at all any hulla that would have been at about 8.30 P.M. But the witness has said that it was at about 7.00 P.M. So, the workman was not even able to establish his bonafide through his only witness, Shri Ram Bachan Singh.

17. The consistent story of the management is that the culprits came twice, i.e. once before 7.30 P.M. and again at about 8.30 P.M. The witnesses are consistent on this point that on both the occasions 3 persons came. There is no reason to doubt the statements of these witnesses. If the defence case is believed, there was no occasion for Shri Mukdeo Singh to come to Bakua Nalla twice.

18. The only point which has been urged before me on behalf of the workman is that in the charge itself the G.I. pipes have been mentioned to be the property of Hindustan Housing Factory. There was no mention of any loan of

G.I. pipes given by the P.P.C. Ltd. to Hindustan Housing Factory. The argument is that if the concerned workman was seen removing the pipes belonging to Hindustan Housing Factory, he could not be punished by the employer—P.P.C. Ltd. Now, in this connection I must say that Hindustan Housing Factory is the contractor of P.P.C. Ltd. and entrusted with construction of the colony of P.P.C. Ltd. Some pipe lines were laid for P.P.C. Ltd. by Hindustan Housing Factory. The evidence is that some of these pipes had been removed and the matter was reported to the P.P.C. Ltd. management by the Hindustan Housing Factory. The security officer was ordered to look into the matter. Now, for the purpose of a charge under S. 414 IPC it may have been necessary to prove the ownership. But in a departmental proceeding it was enough to show that the property belong to P.P.C. Ltd. It is said that it was given on loan to Hindustan Housing Factory. I do not even think that it would be a loan to Hindustan Housing Factory for the very simple reason that the pipes were laid for the benefit of the construction of the colony belonging to P.P.C. Ltd. In this view of the matters there had been theft of 3 G.I. Pipes and the security officer was able to find that they had been concealed in the nallah by the thieves to be taken away in the darkness in the night. Since the security officer in his own wisdom wanted to catch hold of the thieves, he did not report the matter to the police at once, but wanted to catch the culprits red-handed. It may not be the correct procedure and it has been rightly criticised by Shri Lalit Burman, but nevertheless, the facts stand that for the strategy adopted by the security officer the culprits were caught and one of them was the concerned workman.

19. It is not the purpose of the departmental proceeding to establish the case of legal theft. We do not know if the Nallah is situated within the company's premises. But about these G.I. pipes it has been clearly stated that these belong to P.P.C. Ltd. Some of these pipes were found to be in the possession of the concerned workman who does not claim them to be his own. Naturally, therefore, the concerned workman did not challenge the company's ownership of the G.I. Pipes. Now, this being the position, there is abundant evidence to show that the concerned workman had committed the misconduct of removing in an unauthorised manner the G.I. Pipes belonging to the company. The proceeding was, therefore, in order. I have gone through the report of the enquiry officer and I do not find anything perverse in it. I may also mention that the management even served a show cause notice to the concerned workman passing the order of dismissal. In a case like this which involves theft of company's property, no lenient punishment can be advocated and therefore, I hold that the order of dismissal is justified.

20. Thus, considering all aspects of the matter, I hold that the action of the management of M/s. Pyrites Phosphates and Chemicals Limited, P.O. Amjhore District Rohtas, in refusing to reinstate Shri Mukdeo Singh, F.B. No. 1864 mazdoor is justified. Consequently, the workman is entitled to no relief.

This is my award.

Sd/-

I. P. SINGH, Presiding Officer

[No. L-29012/10/79-D.III(B)]

S.O. —In pursuance of section 17 of the Industrial disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal No. 2, Dhanbad in the industrial dispute between the employers in relation to the management of Lapse Kyanite Mine of M/s. Hindustan Copper Limited and their workmen, which was received by the Central Government on the 9-9-81.

BEFORE SHRI I. P. SINGH, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL

(NO. 2) DHANBAD

Reference No. 20 of 1980

In the matter of an industrial dispute under S. 10(1)(d) of the I.D. Act, 1947

PARTIES:

Employers in relation to the management of Lapse Kyanite Mine of M/s. Hindustan Copper Limited and their workmen.

APPEARANCES :

On behalf of the employers : Shri Ashok Sarkar, Advocate.

On behalf of the workman : Shri S. Mishra, Advocate.

STATE : Bihar. INDUSTRY : Kyanite mine.

Dhanbad, the 4th September, 1981

AWARD

This is a reference under S. 10 of the I.D. Act, 1947. The Central Government by its order No. L. 29012/3-80-DIII(B) dated 29th August, 1980 has referred this dispute to this Tribunal for adjudication on the following terms:

SCHEDULE

"Whether the management of Lapso Kyanite Mine of M/s. Hindustan Copper Limited, P.O. Goludih, District Singhbhum in dismissing Shri Gurucharan, ex-driver is justified? If not, to what relief is the workman entitled?"

2. The concerned workman, Shri Gurucharan happened to be a driver of a dumper BRS 3128. In fact he has been in the employment of Lapso Kyanite Mine of M/s. Hindustan Copper Ltd. (Singhbhum) since 15th April, 1966. The management's case is that the concerned workman on 13-3-79 filled up a tank in the vehicle with diesel at about 7.00 A.M. The driver had to go to Pagadih for bringing material and the trip both sides is only 6 kms. On 13-3-79 it so happened that 2 security sepoy Shri Raghunath Singh and Shri Abdes Prasad noticed this dumper in village Raghadih close to the house of the dumper driver Shri Gurucharan. They have seen Shri Gurucharan taking out diesel oil from the tank of the vehicle with the help of a pipe. One 5 litres tin had already been filled up and another 5 litres tin was being filled up. They intervened but Shri Gurucharan became very furious and threatened to assault them. They left the place and reported the conduct of Shri Gurucharan to Shri K. Venkataraman, the Agent of the company. Shri Venkataraman ordered Shri Dasgupta to go to the spot and to investigate, but by the time Shri Dasgupta reached the spot the vehicle had already gone to Pagadih for loading of Kyanite. On return of the vehicle Shri Dasgupta instructed the driver Shri Gurucharan to get the tank again filled up which was done for the second time that day. It took 12 litres of diesel oil to fill the tank. According to the management since it takes only 2 litres to cover a distance of 6 kms. the absence of 10 litres of diesel from the tank could be explained only through pilferage.

3. The concerned workman, Shri Gurucharan was accordingly charge-sheeted by the management and he submitted his explanation which was found to be unsatisfactory. The domestic enquiry was held in which witnesses were examined. The enquiry officer found the concerned workman guilty of misconduct by means of theft of company's property under clause 9(iii) of the certified standing order. The management considered the report and dismissed the concerned workman from service.

4. An industrial dispute was raised by Shri Gurucharan, the concerned workman which ended in failure and this reference was made.

5. On a prayer was made by the management to decide the question of fairness and propriety of the domestic enquiry evidence was led before this Tribunal and it has already been decided that the domestic enquiry is fair and proper. The parties have been since heard on the merits of this case.

6. The first point which was taken up by the management is that in this case there is no industrial dispute and so the reference as it stands is not maintainable. It has been pointed out that in the reference it has been mentioned that industrial dispute exists between the management of Lapso Kyanite mines of Hindustan Copper Ltd. and their workmen. In respect of the matter specified in the schedule, I have readily quoted the schedule above which is limited to the question as to whether the dismissal of Shri Gurucharan by the management is justified. In the reference copies of the reference have been forwarded to the parties concerned. No union appears to be a party because a copy has been forwarded to Shri Gurucharan, ex-truck driver. This shows that Shri Gurucharan was not represented by any union. The written statement in this reference has been filed and signed by the concerned workman himself. It is apparent that Shri Gurucharan raised the dispute under S. 2(a) of the I.D. Act, 1947. Obviously there has been an error in the order of reference in stating industrial dispute between the management of Lapso Kyanite mine of M/s. Hindustan Copper Ltd. and their workmen. In fact it is an individual dispute under S. 2(a). S. 2(a) mentions that a dispute raised in this section shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to this dispute. Since by its very nature the dispute has to be an industrial dispute, this reference cannot be said to be bad in law.

7. Now, let us look into evidence adduced in this case. Ext. M1 is the charge-sheet dated 13-3-79. It has been signed by the Manager, Lapso Kyanite Mine. The reply of Shri Gurucharan is on the same sheet, dated 16-3-79. In his reply he has admitted that he had stopped his vehicle BRS 3128 on 13-3-79 at 7.30 A.M. in village Raghadih. But the plea taken by the workman is that he had stopped the vehicle there in front of the house of the Post Master to withdraw money. He has also admitted that security sepoy, Shri Raghunath Singh and Shri Abdes Prasad arrived there and charged him for stealing of diesel from the vehicle. With regard to these two sepoy his plea is that both of them are angry with him because he refused to make them sit in the vehicle or to carry their articles in the vehicle. His further plea is that every morning when the tank is filled up the full tank is not filled up because if the tank is full it will overflow. This plea is taken in order to explain the shortage of 10 litres of diesel in the tank.

8. The enquiry was conducted by the Administrative-cum-Security Officer, Major V. R. Singh who was appointed enquiry officer under the appointment letter, Ext. M2 dated 19-3-79. The enquiry notice issued by him is Ext. M3, the enquiry proceeding is Ext. M4 and the enquiry report is Ext. M5. The concerned workman was dismissed under the dismissal letter Ext. M6.

9. The evidence of Shri K. Venkataraman is exhaustive on all points. He was not cross-examined by the concerned workman in whose presence the evidence was taken. Shri Awadesh Prasad, sepoy has deposed that he was coming along with Shri Raghunath Singh when they noticed dumper BRS 3128 in village Regarih. They also noticed that Shri Gurucharan taking out diesel from the tank of the dumper by means of pipe. One 5 litres tin was already full and other 5 litres tin was being filled up. They challenged Shri Gurucharan upon which the driver took out a rod and wanted to assault Shri Raghunath Singh. Out of fear they came to the camp and reported the matter to the Agent. Similar is the evidence of Shri Raghunath Singh, sepoy. Both of them were cross-examined but nothing has been elicited to be used by the workman in his defence.

10. The other witness for the management is Shri M. Sayeed, store clerk. His evidence is that all the dumpers come to him every morning at 7.00 A.M. and their tanks are made full. On 13-3-79 he made the tank BRS 3128 full. He prepared a slip for quantity of diesel supplied in that vehicle and it was signed by the driver, Shri Gurucharan. Then again on the same date the vehicle BRS 3128 again came and by virtue of the order from superior he made the tank full again in presence of the driver, Shri Gurucharan. This time it took 12 litres to fill the tank. Again a slip was prepared over which the driver signed. In cross examination he has admitted that the helpers of the diesel vehicles actually fill the diesel in the tank. But he checks them all. There is nothing in his evidence to disbelieve him. It is not even suggested in cross-examination of this witness that the tanks are not made full due to the risk of overflow.

11. Shri Gurucharan in his evidence has said that he had stopped the vehicle in front of the house of the post Master and he had taken out money from the post office when the sepoy Shri Raghunath Singh demanded what he was doing. He simply replied that he had come to the post office and thereafter he went to Pagadih to bring materials. He has admitted that on return the tank was again filled up.

12. His only supporting witness is one Shri Budhan appears that he is not eye-witness of the incident and he had only heard from Shri Gurucharan that although the later had stopped the vehicle in front of the post office, the sepoy had challenged him that he was taking out diesel. This statement is not helpful to the workman.

* 13. At the enquiry stage some documentary evidence had been taken. Two slips were issued for the vehicle No BRS 3128 on 13-3-79. The time of the first slip is 7.20 A.M. and the time of the second slip is 9.20 A.M. These two slips bear the signature of the driver, Shri Gurucharan.

14. It will appear from the above that a shortage of 10 litres of diesel is apparent. The two sepoys had personally seen Shri Gurucharan taking out diesel in two 5 litres tin. The shortage is apparent on the filling of the tank shortly after the first trip of 5 kms. was done by the vehicle. According to the estimate given by Shri K. Venkataraman the vehicle runs 3.4 km. per litre. It means that hardly 2 litres were consumed in that trip. But the vehicle took in the tank 12 litres of diesel. This shows that 10 litres of diesel was found short. The driver had not explanation to offer for this shortage. The clear case of the management is that this was a pilferage by the driver Shri Gurucharan. It is therefore held that the charge of misconduct has been amply proved.

15. In the course of argument on behalf of the workman it was contended that the punishment was too severe and that the Tribunal may interfere in the quantum of punishment. Shri Ashok Sarkar representing the management has submitted that the pilferage of petrol and diesel from the company's vehicle is a regular feature and it was for this reason that the concerned workman was given exemplary punishment to deter others. There is a good deal of sense in this argument and I have no mind to suggest a lighter punishment. Shri Ashok Sarkar has, however, submitted before me that in the matter of punishment he will inter se with the management and see what can be done about.

16. Thus, considering all aspects of the case, I hold that the management of Lapsa Kyanite Mine of M/s. Hindustan Copper Ltd. P. O. Goludih, District Singhbhum in dismissing Shri Gurucharan, ex-driver is justified. Consequently, Shri Gurucharan, ex-driver is entitled to no relief.

This is my award.

Sd/-

J. P. SINGH, Presiding Officer.

[No. L-29012/3/80-D.III(B)]

K. K. HANDA, Under Secy.